



# EXHIBIT 1

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1 APPEARANCES (Continued):

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Counsel for Defendant

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1 probably come out saying, there are lots of facts here and  
2 there's no way that I can say, because every time I say it,  
3 the Third Circuit sends it back, saying, gee, you should  
4 have let this go forward.

5 So this is my situation. You tell me what your  
6 situation is and we will see how we can go forward.

7 MR. FASTOW: Thank you, your Honor. Jay Fastow,  
8 for the plaintiffs.

9 And as plaintiffs, of course, we'd like to get  
10 to trial, but in light of the of Court's decision recently,  
11 we think that the more efficient way to address this is to  
12 do a couple of things first.

13 We would like to make a motion and we plan to do  
14 it within the next week, in a week, addressing the opinion  
15 and the order, a couple of grounds.

16 THE COURT: So you're talking about motion for  
17 reconsideration and having me go back and go through the  
18 exhaustive exercise again?

19 MR. FASTOW: Well, your Honor, if you like,  
20 I could preliminarily preview it for you. But really  
21 what we're looking at are a couple of things, just  
22 briefly.

23 One is clarification in terms of the -- the  
24 Court's rationale on the Daubert motion compared to the  
25 final order the Court issued, excluding Dr. DeRamus'

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# PROCEEDINGS

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3 (Proceedings commenced in the courtroom,  
4 beginning at 4:27 p.m.)

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1 testimony, because what the Court did, as we read it,  
2 is went off on the Court's view of the sufficiency of  
3 the strategic business plan. And there are a couple of  
4 things.

5 One is, Dr. DeRamus, as the Court recognized  
6 in the decision, also had in his report the discussion of  
7 non-damage issues, injury to competition, injury to  
8 plaintiffs. And the Court specifically says, I'm not  
9 addressing that here. So we think that, number one, we  
10 would like clarification that when the Court says the  
11 motion to exclude his testimony is granted, that it does  
12 not include those issues.

13 A second one, again, is clarification. We  
14 submit the lack of connection between the Court's rationale  
15 and even on damages, whether Dr. DeRamus would be allowed  
16 to testify, because, again, the Court went off on its view  
17 of the sufficiency of the strategic business plan, but  
18 there are alternative damages approaches that Dr. DeRamus  
19 can use. And, in fact, the case from the Third Circuit the  
20 Court cited, in Re Paoli, specifically endorses that in  
21 Footnote 19.

22 THE COURT: Well, I will tell you, that was  
23 the worst expert report I ever read in all my years on  
24 the bench. It was. So if, in fact, it's everyone's wish  
25 to go forward and just get this to a close, then you would

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1 need to specifically point out to me where in the report  
2 his alternate damages theories that do not -- I mean, I  
3 don't know what he relies on and how you can have an  
4 alternate damages theory, as far as I can see, without any  
5 underlying -- any underpinning data.

6 But without getting into it here, because I,  
7 frankly, don't have the patience for it, if it's our  
8 considered view that it's better to get this case to trial  
9 in some fashion, to put this matter to rest, then I will  
10 certainly let you point out where his alternate theories  
11 are and that they don't at all rely on the data that I found  
12 so lacking, and that they do rely on something that is  
13 appropriate.

14 So move on.

15 MR. FASTOW: Well, your Honor, just to be  
16 crystal-clear from the plaintiffs' perspective, it's our  
17 view that we should go through this motion first before we  
18 proceed towards trial. We'd like to get to trial and do  
19 want to get to trial. I believe we have a right to get to  
20 trial. We think it makes sense to work through these issues  
21 preliminarily.

22 A related, or another issue that we're going  
23 to raise in this motion relates to the rationale of the  
24 opinion compared to the motion that was, in fact, made.  
25 And the motion that defendant Eaton made was not under --

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1 well, let me put it this way. The Court's decision was  
2 under Rule 703. Eaton did not make a motion under Rule  
3 703.

4 THE COURT: That's fine, but as a gatekeeper,  
5 I think I can review this under anything.

6 If you want -- well, all right. As I said, I  
7 appreciate the fact that you want to file this motion, but  
8 I really don't want to hear it today.

9 MR. FASTOW: That's fine, your Honor.

10 THE COURT: So on to how we get to trial.

11 You believe that all of these issues need to be  
12 addressed before we get to trial?

13 MR. FASTOW: Yes, your Honor. We think that's  
14 the appropriate and efficient and sensible way to do that.  
15 And then once we get through this motion, then we would  
16 like to come back to your Honor and set another conference  
17 date.

18 THE COURT: All right. Thank you.

19 MR. FASTOW: And just, your Honor, one more  
20 point I will mention is that Eaton has mentioned in its  
21 submission yesterday that they want to renew the motion  
22 for summary judgment on statute of limitations grounds. I  
23 think they also mentioned reconsideration motion.

24 THE COURT: Yes.

25 MR. OSTOYICH: Your Honor, Joe Ostoyich from

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1 Howrey, for Eaton Corporation.

2 We have gone through the process outlined by  
3 the Federal Rules. We have engaged in fact discovery and  
4 completed it. We've engaged in expert discovery and  
5 completed it. We are ready to go to trial.

6 If we're going to have a delay, which we are not  
7 advocating, we're all ready for this. This was the process  
8 that's outlined, and if the expert didn't survive, just like  
9 any other evidence, if they don't have backup evidence, I'm  
10 not sure how they get to trial.

11 But we advocate starting the trial on the 8th.  
12 If we're not going to, we do think we'd like that  
13 opportunity to renew some of those motions because we  
14 thought they were good motions, but we're here and ready to  
15 start the trial on the day it's scheduled.

16 THE COURT: All right. So it's not clear to me  
17 that plaintiffs can go to trial without some of this expert  
18 opinion, so if we are going to go to trial, it seems to me  
19 as though we need to go through the exercise and see if any  
20 of the expert opinion survives.

21 So let me propose something with respect to  
22 the schedule. Right now, I've got a criminal trial that  
23 I've got to try because we've got the Speedy Trial Act,  
24 and so I wouldn't be starting this trial until the 10th,  
25 not the 8th. I've run up against another obstacle the

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1 following week, where I can't attend to this case.

2 And you may sit down, sir.

3 MR. OSTOYICH: Thank you.

4 THE COURT: I guess what I'm proposing is, if I  
5 only have two weeks to give this case under the best of  
6 circumstances, number one, do you think we can accomplish  
7 the trial in two weeks?

8 I do try virtually all of my patent cases in  
9 two weeks or less. It seems to me we can do this in two  
10 weeks. And, if so, whether, because this was a four-week  
11 trial, whether, if I get my double-booked civil case that --  
12 if I can get them to switch, would you be available to try  
13 this case the weeks of the 22nd of September and the 28th  
14 of September, rather than starting it as early as the 10th,  
15 so that I have some time to address the plaintiffs' motion  
16 for reconsideration to see what, if anything -- whether, in  
17 fact, they've got expert opinion upon which to base any of  
18 their case?

19 MR. FASTOW: Your Honor, well, just, first of  
20 all, while we think that we would be entitled to proceed to  
21 trial in any event, we certainly think it makes sense, as  
22 your Honor is suggesting, to address these expert issues  
23 first.

24 In terms of the schedule, I think in the  
25 pretrial order, if I'm not mistaken, the total number of

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1 trial hours that the parties have proposed, if you divide  
2 it by, I guess, 30 trial hours per week, would be in the  
3 five to six-week range. So I mean we, frankly, submit that  
4 two weeks would be way too short for this case. And, again,  
5 as much as we would like to get to trial, we think it's  
6 important to have enough time.

7 THE COURT: I have to say, you are never going  
8 to get five or six weeks of trial time in this court. You  
9 just can't. I don't have it to give. I am double-booked  
10 through 2010. I am booking into 2011, and I think I even  
11 have a few patent trials booked in 2012. You cannot do it.  
12 So we either have to figure out how to separate issues and  
13 get to the heart of this case in a two-week period and then  
14 see where that takes us, or you are -- I don't know what to  
15 tell you. I can't do it.

16 MR. FASTOW: Well, I hear your Honor. I think  
17 for the moment, at least until we can see if there's  
18 something to be done in terms of breaking up issues, that,  
19 from our perspective, two weeks would plainly not be enough.  
20 And we understand that works into your Honor's schedule. We  
21 understand that. And as much as we'd like to get to trial,  
22 we think that's not enough time.

23 THE COURT: All right. Is there -- I don't  
24 know.

25 MR. OSTOYICH: Your Honor, just from a defense

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1 perspective, I think two weeks is a lot for this case. I  
2 think we can accomplish their case and our case in two  
3 weeks.

4 Now, we did put in 80 hours for our case, but  
5 that's pegging off, they gave us a 95 figure and listed 50  
6 trial witnesses. Obviously, if I have to spend 45 minutes  
7 to an hour crossing everyone, that by itself takes a fair  
8 amount of time.

9 This is a two-week trial, in my view. We can  
10 start on the 22nd, if we need to.

11 One thing I want to clarify. Are they saying  
12 if they file a motion for reconsideration and you deny that  
13 and in effect hold that the doctor's report is entirely out,  
14 that we're still going to have the trial, because I have a  
15 lot of people we have to gear up for this. So if we are not  
16 going to do that, I would like to know that now just so we  
17 can figure out our schedules.

18 THE COURT: Well, I have to say that I focused  
19 on the damages issue, not the liability issue, because that  
20 was clearer to me. I have limited time and resources, so I  
21 addressed the issue that was clearer.

22 Now, I don't know how you go forward on a case  
23 if you don't have damages even if there is some other report  
24 that addresses the liability issue.

25 Now, so I guess in that regard, I guess they are

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1 making the point that -- well, they've got their arguments  
2 on the damages theory of the case. So I don't know.

3 I guess we should ask plaintiffs' counsel, if,  
4 in fact, I conclude that there is no damages theory to which  
5 this witness can testify, then how is it that we would be  
6 going forward?

7 MR. OSTOYICH: I guess, your Honor -- first, the  
8 answer is, yes, we believe we still would be entitled to go  
9 forward.

10 THE COURT: I truly wish you wouldn't use the  
11 word "entitled."

12 MR. FASTOW: Okay.

13 THE COURT: Because there are very few things in  
14 life to which we are entitled, and I suspect in this case,  
15 there's not a whole lot anyone is entitled to.

16 MR. FASTOW: All right. As to the bases, we  
17 believe we could still proceed on damages with respect to  
18 fact evidence and lay opinion testimony under Rule 701,  
19 and there's a whole collection of cases dealing with lay  
20 opinion testimony with respect to future profits, with  
21 respect to business valuation, under Rule 701.

22 Separately, there's a claim for injunctive  
23 relief. So, in any event, of course, damages don't go to  
24 that at all.

25 THE COURT: And since the business -- since

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1 there is no business anymore, what kind of injunctive relief  
2 are you talking about?

3 MR. FASTOW: We're talking about injunctive  
4 relief, for example, that they could not have these long-  
5 term agreements, shouldn't be able to be long term anymore.  
6 That they shouldn't be able to agree with OEMs.

7 Well, your Honor, can I just stop for a  
8 second? I don't want to get into anything that would  
9 implicate the confidentiality order. I see we have some  
10 folks here.

11 THE COURT: Well, I guess I wasn't clear that  
12 you were still a competitor, and if you weren't a  
13 competitor, I'm not sure how you would have standing for  
14 any injunctive relief, but that's neither here nor there.  
15 That is your view on how we could proceed to trial  
16 regardless of my decision.

17 MR. FASTOW: Yes, your Honor. We believe on  
18 both damages and injunctive relief, we could proceed.

19 THE COURT: Can I ask you a question? You're  
20 a very nice man, and I appreciate, and I have tried to make  
21 sure that you and your clients have been able to proceed  
22 and to gather your evidence, but when I look at it, as I  
23 said someplace in my memorandum order, this is a business  
24 that wasn't in business that long before it went out of  
25 business, and the figures that you are coming up with just

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1 strike me as the kind of extravagant greed that makes  
2 everything look suspect.

3 So I mean, I have to say that if -- well,  
4 there's no way anyone can settle when you're out here and  
5 reality is probably far removed from that. But I take it  
6 your clients are absolutely wedded to these figures that  
7 just, to me, are not at all connected to the real world.

8 Is that the case?

9 MR. FASTOW: Are you asking on a litigation side  
10 or a settlement side?

11 THE COURT: On a settlement side.

12 MR. FASTOW: Your Honor, we're always prepared  
13 to have meaningful settlement discussions.

14 THE COURT: But I'm just saying, you can't  
15 with those figures, and you seem bound and determined to  
16 stick with these figures come whatever or high water. All  
17 right.

18 MR. FASTOW: Your Honor, I will mention it. Of  
19 course, settlement comes both ways.

20 THE COURT: That's true.

21 MR. FASTOW: And I think we shouldn't get  
22 into much more, but there are two sides to a two-party  
23 settlement.

24 THE COURT: I understand that. And, certainly,  
25 this isn't a completely one-sided case. That's why it has

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1 gotten this far.

2 All right. Well, what I would propose is the  
3 following. Well, it's unusual to me to have a plaintiff  
4 who is not -- it does not seem as though you even want to  
5 try to somehow get the case to trial soon because, as I  
6 said, I can't promise you I will ever have five weeks to  
7 give you.

8 So let's assume for the moment that you file  
9 your motion for reconsideration and it's briefed promptly  
10 and that I have to get to it promptly, obviously, and that  
11 you can proceed to trial. Is there no way that we can do  
12 this in two weeks?

13 MR. FASTOW: Your Honor, I don't see at all  
14 doing the entire trial in two weeks.

15 One of the issues that I think your Honor has  
16 raised, and we're perfectly prepared to speak with Eaton's  
17 counsel about it, is whether there are ways to bifurcate  
18 the issues, whether that makes sense, and see if at least we  
19 can do it in some pieces.

20 Yes. So maybe we can follow up, if that's --  
21 if there's some way to do that, because, again, you're  
22 entirely right. We're the plaintiff. We would like to get  
23 to trial. Just in light of this decision, we think it makes  
24 sense to work out some of these things first, and then we  
25 are prepared to talk to them about ways to bifurcate.

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1 THE COURT: All right. Thank you.

2 And from defendant's points of view, are there  
3 issues that are more critical that -- is there any domino  
4 effect here? Are there issues that are critical so that if  
5 they go forward and they go in either party's direction,  
6 that that is a clear enough signal that the parties might  
7 be able to not try every issue that they have asserted  
8 against each other?

9 MR. OSTOYICH: I mean, in concept, it's hard to  
10 tell. We're dealing with shifting sand, your Honor. Let me  
11 just give you an example.

12 We were here about three months ago, arguing  
13 the possibility of summary judgment, and we heard bundled  
14 rebates and Lepages and we heard exclusive dealing and  
15 Dentsply. Well, lo and behold, I got the jury instructions  
16 two weeks ago. There is no jury instruction on bundled  
17 rebates and there is no jury instruction on exclusive  
18 dealing, and they've objected to our instructions on  
19 exclusive dealing. They have a very brief mention of it in  
20 their 80 papers of instructions.

21 So I don't even know what the basis for the  
22 case is at this point. It's this very amorphous kind of  
23 something anticompetitive. It's really not easy for me to  
24 pin down.

25 So in concept, I would say maybe, but I can't

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1 tell, because I don't know what the basis for the case is.

2 What I will do while I'm up here, your Honor,  
3 if I can just ask the question, I'm not clear. If they file  
4 a motion for reconsideration and I can demonstrate that all  
5 of Dr. DeRamus' damages methodologies are pinned down to  
6 that plan and what other flaws there are, now it sounds  
7 like if you deny their motion for reconsideration, they also  
8 want to proffer lay witnesses on damages.

9 Well, we did not have the possibility during  
10 discovery of cross-examining those, because we did not know  
11 that was realistic. I submit to you, they should not be in  
12 a better position now than they would have been if they  
13 proffered that under their rules.

14 So how many bites at the apple are they going to  
15 ask for? And I just submit, we should just have the trial  
16 and be done with it, because we're confident at this point  
17 and we've got our evidence lined up.

18 THE COURT: All right. Well, that is a problem  
19 for the plaintiff. If, in fact -- well, no evidence can  
20 come in unless it was vetted through the discovery process,  
21 and even if witnesses testified as to facts that might be  
22 relevant to damages, if it wasn't in the context of damages  
23 so that it was clear what the scope of the questioning  
24 should be, that's a problem.

25 So I'm not sure we need to talk about that

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1 today, but, certainly, I share the defendant's concern about  
2 the alternate resolution to your problem, that you can just  
3 rely on fact witnesses.

4 MR. FASTOW: Well, your Honor, if we have  
5 witnesses whom they depose and didn't ask those questions,  
6 it's not our fault.

7 THE COURT: Well, clearly, in a sophisticated  
8 antitrust case, you don't go forward on lay witnesses.  
9 You go forward on an expert. The fact that the expert at  
10 this point hasn't gotten through the Daubert gate does not  
11 mean you can go back and say, well, we really meant to rely  
12 on fact witnesses unless you specifically identified them  
13 and it was clear to the defendant that you've got an expert,  
14 but you're also relying on fact witnesses to prove a damages  
15 case.

16 Don't tell me that that would have been clear to  
17 anybody unless you specifically made it so.

18 MR. FASTOW: Well, your Honor, as you say, we  
19 can argue that issue another time.

20 THE COURT: Yes. Yes, you can. Yes, you can.

21 All right. Well, let me say this. That,  
22 clearly, until we're all on the same page as to what  
23 theories and claims the plaintiff is pursuing, we cannot  
24 hope to identify those that are more critical versus less  
25 critical.

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1 Is there someplace in the pretrial, the rather  
2 hefty pretrial stipulation, that we could start kind of  
3 looking at that?

4 MR. FASTOW: Yes, your Honor. I think there's  
5 a quite extensive discussion of our claims in the pretrial,  
6 proposed pretrial order.

7 THE COURT: All right. And is that as helpful  
8 as the actual jury instructions that you submitted, which  
9 it's kind of where the rubber meets the road when it comes  
10 to --

11 MR. FASTOW: I think the proposed pretrial  
12 order lays out our notion of our theories, facts that need  
13 to be adjudicated, facts that we think do not need to be  
14 adjudicated, but should be deemed established.

15 THE COURT: And where is that helpfully  
16 located?

17 MR. FASTOW: Well, just starting briefly on  
18 Page 1, we have a brief statement of our case. Then we  
19 have a list of joint statement of facts, which are admitted  
20 and require no proof on Page 3. Then we have our proposed  
21 statement of facts starting on Page 6.

22 THE COURT: Well, it's not the facts. It's  
23 what legal theories you are pursuing based on the facts.

24 MR. FASTOW: I think, your Honor, when one  
25 goes through the facts that we deemed should be admitted

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1 and require no proof and then the facts at issue.

2 For example, we can look at issues of fact  
3 which remain to be litigated on Page 18. We have a list of  
4 our facts and -- I'm sorry -- our statement.

5 And I think, in fact, defendant is correct in  
6 one sense, which is that you can't put one simple name on  
7 our claim. What they've been trying to do through the whole  
8 case is to call this a predatory pricing case, for example.  
9 It's not just a predatory pricing case. And while they may  
10 be frustrated by the fact that this is a set of claims,  
11 Section 1 of the Sherman Act, Section 2 of the Sherman Act,  
12 Section 3 of the Clayton Act, they are about lots of  
13 anticompetitive conduct, and that you cannot just call it  
14 a simple name.

15 We're entitled -- I will use a different word --  
16 those are perfectly viable and valid claims and are  
17 recognized by cases like Dentsply, like Lepages, many of  
18 the case that we've cited.

19 THE COURT: Well, Dentsply was a fairly easy --  
20 I mean, it was an easier case in that it was clearly an  
21 exclusive dealing, and this is more complicated because --  
22 well, the contract you're talking about wasn't explicitly  
23 exclusive, but that's neither here nor there.

24 MR. FASTOW: We submit there are many more piece  
25 of anticompetitive conduct, both individually and in

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1 concert, in which the defendant here has engaged.

2 So while they keep trying through the whole  
3 case -- you saw you saw it in the motion to dismiss, you  
4 saw it in the motion for summary judgment. To pigeonhole  
5 it into one particular name, that's not how our claims  
6 work. And, of course, we're the master of our claims.

7 THE COURT: All right. This is my concern  
8 about plaintiffs' case, just as it was my concern about  
9 plaintiffs' expert report, is that you rely on so many  
10 facts. I mean, you push so much information at the  
11 fact-finder, that I suspect there's no real way any lay  
12 fact-finder, like a jury, even a judge, can possibly  
13 understand what it all actually means. I mean, when you lay  
14 out your seven, or your six statements, that looks really  
15 easy. I mean, it looks like, well, this is all you have to  
16 do, but your theory is based on conduct -- well, I don't  
17 know.

18 I mean, that is why you think it is going to  
19 take you six weeks to try the case, because you are just  
20 throwing everything that happened during this three years  
21 into the mix, and I get the impression that you're hoping  
22 that the antitrust theory floats to the top. That's just  
23 my impression.

24 MR. FASTOW: Your Honor, just two points on  
25 that.



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1 One is, of course, your Honor did deny Eaton's  
2 motion for summary judgment on the merits of the case.  
3 And I would also refer your Honor to the discussion  
4 beginning on Page 28 of the proposed pretrial order,  
5 entitled, the heading, "Brief Statement of what Plaintiffs  
6 Intend to Prove in Support of Their Claims." So that's  
7 another discussion in the pretrial order of what we have.

8 And I think, if you match it page per page, it  
9 may be that the defendant has a much longer discussion on  
10 their side. I have not counted it, but in some of the  
11 sections, I believe at least that's true.

12 In any event, I'm past summary judgment, and,  
13 yes, they can hide behind the view that, well, this should  
14 be a simple case when they've done, in our view, many things  
15 that were anticompetitive. And of course, we intend to  
16 raise the very anticompetitive conduct in this case.

17 THE COURT: Well, when I look at what you have  
18 provided on Pages 28 and 29, these are not legal theories.  
19 I mean, there's no way to separate out issues based on what  
20 you've done on Pages 28 and 29. I mean, those are not kind  
21 of different -- well, so I can't imagine that there's any  
22 way to do this.

23 MR. FASTOW: I think, your Honor, that's where  
24 you can look at the proposed jury instructions, where we  
25 lay out the law we think is appropriate here. And as much

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1 as they want to put a name, bundled rebates, the case is a  
2 lot of things. And the cases that we cite in the proposed  
3 jury instructions and elsewhere in this case on the motion  
4 to dismiss, the motion for summary judgment, show that we  
5 are very -- that they support the notion that plaintiff  
6 can sue when a defendant engages in lots of anticompetitive  
7 acts, and lots of kind of anticompetitive acts, as well as  
8 if the defendant engaged in only one type of anticompetitive  
9 act.

10 THE COURT: So it's really not that you are  
11 pursuing different claims, it's just that you simply have a  
12 whole lot of evidence you want to propound to support your  
13 claims. So it does not sound like there's any way to  
14 whittle down this trial.

15 I mean, certainly, I guess if I have no choice,  
16 I can give you a choice. You either do it in two weeks now,  
17 or we postpone and hope that at some point in the future,  
18 all my other cases will go away one way or another so I can  
19 give you more than two weeks. I don't know.

20 MR. FASTOW: Your Honor, as I said, we're  
21 willing to put our minds to the task of seeing whether  
22 there's a way to bifurcate something. But I think when  
23 you think about Eaton's summary judgment motion, it was  
24 also all kinds of stuff.

25 THE COURT: Well, but they were addressing what

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1 you had proposed. And I guess the other problem is, if, in  
2 fact, you're not necessarily saying that each kind of  
3 conduct is necessarily anticompetitive -- well, are you  
4 saying that it's not that each conduct can be classically  
5 characterized as anticompetitive, but that all the conduct,  
6 when you take it together, produces an anticompetitive  
7 effect?

8 MR. FASTOW: Well, your Honor, what we're saying  
9 is that each piece of conduct that we want to cite is  
10 anticompetitive, but that the Supreme Court has also held  
11 that we're entitled to put it altogether and they have a  
12 cumulative effect. That's the Continental Ore case in 1962,  
13 where the Supreme Court rejected exactly what Eaton is  
14 trying to do here, which is to slice out each type of  
15 conduct, look at that separately, and then try to move on.  
16 The Supreme Court rejected just that argument and said that,  
17 no, you look at it altogether.

18 THE COURT: Which is what makes this case so  
19 difficult, both from a summary judgment point of view and  
20 from a trial management point of view, which is why I  
21 focused on damages, because you're piling a whole lot of  
22 information, from what I saw, on a very slim read.

23 Now --

24 MR. FASTOW: Your Honor, perhaps -- could I  
25 propose something?

25

1 THE COURT: Yes.

2 MR. FASTOW: Maybe it makes sense, let us make  
3 our motion regarding the Court's recent order, have that  
4 briefed and heard, and then perhaps get back together again  
5 and see where we are after the Court has resolved that  
6 motion.

7 THE COURT: All right. Well, if we do that,  
8 let me say that I will rearrange my trial schedule either  
9 by having the other trial go earlier or by rescheduling  
10 that trial, which is a much simpler trial, so that at least  
11 we'll have two contiguous weeks starting on September 22nd,  
12 or are you saying that we -- that, truly, this will just  
13 be another issue for appeal if I say, we have to go forward  
14 and do this in two weeks?

15 I mean, I get in enough trouble with circuit  
16 courts anyway, I'm not sure I want to take this on, because  
17 I have to say that I could not survive, and I don't know how  
18 any judge does, without timed trials, so that you actually  
19 can schedule trials during the year.

20 And if I go forward and you, appeal and my very  
21 favorite court, the Third Circuit, says, oh, Judge Robinson,  
22 we've decided that timed trials really aren't a good idea,  
23 you know what's going to happen? We won't try cases here.

24 So as an outside counsel, you might not care  
25 about that. I suspect local counsel might care a little

26

1 bit more, but I, frankly, am not sure I want to risk  
2 that.

3 As I said, there's no way I can give you more  
4 than three weeks, but the question is whether I go to the  
5 trouble of rearranging everything to give you the two  
6 contiguous weeks, or whether you're saying at this point,  
7 if you can't give us at least three, if not four, if not  
8 five, if not six, we can't possibly try this complicated  
9 case.

10 MR. FASTOW: Well, your Honor, I feel very  
11 confident on the lower parts of those numbers, but I'm  
12 willing to think about the bifurcation issue, to see if we  
13 can work at it, because we understand from our perspective,  
14 if there is something that makes sense, it allows us to get  
15 to trial sooner, so we have an incentive to do that once the  
16 motion issues have been cleared up. We understand plainly  
17 the value to us in getting to at least a trial, if not the  
18 full trial, if there's something that makes sense, but, for  
19 example, two weeks, I just do not think that that would be  
20 enough time to try this case entirely.

21 THE COURT: All right. Thank you.

22 Let's hear from defendant's counsel. I mean, I  
23 think part of the problem has been that -- well, anyway,  
24 what say you?

25 MR. OSTOYICH: Again, your Honor, we can try

27

1 the case in two weeks. I think that's reasonable. I don't  
2 know what we can slice out and bifurcate. I'm not in favor  
3 of it.

4 We're here. We're ready to go. This was the  
5 schedule the parties agreed upon and submitted to you a  
6 long time ago, and just like an evidentiary question, if a  
7 ruling is issued pretrial, you live with it and you go to  
8 trial, and that's what I would advocate here.

9 I don't think there's any reason to delay this  
10 and drag it out. The client just pays more money. It's not  
11 good for anything. It's just hanging over our heads.  
12 Frankly, we'd just like to be done with it and get it  
13 cleared.

14 Thank you.

15 THE COURT: All right. Well, let me work on  
16 my schedule, see what I can do. In the meantime, we've got  
17 to have a motion for reconsideration filed and we need to  
18 have it filed promptly so that the defendant has an  
19 opportunity to respond so that I have an opportunity to  
20 resolve it before we might go to trial. All right?

21 MR. FASTOW: We would propose, your Honor, a  
22 week from today. Next Thursday, we would propose to file  
23 that motion.

24 THE COURT: All right.

25 MR. FASTOW: And I will mention that although

28

1 defendant is now saying how they're ready to go to trial,  
2 they also asked your Honor to address two motions, summary  
3 judgment and statute of limitations motion. They also want  
4 to re-raise the reconsideration motion.

5 THE COURT: I know, and I honestly wish I could  
6 do it, but I really can't.

7 MR. OSTOYICH: We're saying in the alternative.  
8 We would rather just try the case and be done with it. If  
9 we're going to have a delay, if it's not going to be until  
10 September 22nd, or 2010, then we'll take you up on the  
11 order, your Honor, which said you're denying without  
12 prejudice to refile.

13 THE COURT: All right. Well, we're not delaying  
14 at the moment, so let's focus on the motion for  
15 reconsideration, and include in that your theory, sir, that  
16 even if I continue to believe that your expert should not  
17 testify on the grounds illuminated in his expert report on  
18 damages, that there's some alternate way you can prove  
19 damages, so that we can -- and let me just look.

20 I don't feel like turning on my computer, so let  
21 me look at paper.

22 All right. So Thursday, the 3rd. Now, under  
23 the local rules, a response wouldn't be due until the 17th,  
24 which, obviously, does not give us enough time.

25 Can you do this by the 10th or the 11th?

29

1 MR. OSTOYICH: I don't have my calendar. Either  
2 one of those, your Honor. You tell us.

3 THE COURT: All right. Well, you've got Labor  
4 Day, so actually the 14th. If you could get something back  
5 by the 14th. And if I need -- that's getting awfully close.

6 That's less than a week away. I know you all  
7 are gearing up for trial is the problem, and that's an  
8 expensive proposition. I don't know whether plaintiff is,  
9 but defendant seems to be gearing up for trial.

10 MR. FASTOW: Your Honor, I think, again, it goes  
11 back to trying to shoehorn, you know -- and I understand  
12 your Honor's scheduling problems. But let me just mention  
13 the pretrial order, just to give the Court a sense of at  
14 least what the parties were thinking about.

15 THE COURT: Well, I mean, honestly,  
16 shoehorning -- I don't really care what the parties were  
17 thinking about.

18 MR. FASTOW: All right.

19 THE COURT: It's how much this Court can bear,  
20 and I mean that in b-e-a-r, under its strained, limited  
21 resources. So I think probably maybe 9/11 instead of 9/14  
22 for the defendant's response. In the meantime, I will let  
23 you know whether I can rearrange my trial schedule. I,  
24 frankly, don't know.

25 I have no idea at this point in my mind -- I'm

30

1 sure I start a trial the first full week of October, but if  
2 I can rearrange that and we've got those three weeks, then  
3 please just see with your people whether, in fact, you might  
4 be available, and I will see what I can do.

5 So I will let you know about scheduling next  
6 week. In the meantime, 9/3, September 3rd for the motion,  
7 September 11th for the response, and I might get you on the  
8 phone to schedule a conference about the motion if it's  
9 unclear to me what's going on, or if I have other issues to  
10 address with you. All right?

11 MR. FASTOW: Thank you, your Honor.

12 MR. OSTOYICH: Thank you, your Honor.

13 THE COURT: All right. Counsel, I appreciate  
14 your patience. I find antitrust very, very much more  
15 complicated than patent litigation, by a hundredfold, so I  
16 appreciate your patience. I will do my best to do a good  
17 job.

18 All right. Thank you very much.

19 (Counsel respond, "Thank you, your Honor.")

20 (Court recessed at 5:12 p.m.)

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# EXHIBIT 2

1

1 IN THE UNITED STATES DISTRICT COURT

2 IN AND FOR THE DISTRICT OF DELAWARE

3 - - -

4 ZF MERITOR LLC and MERITOR : CIVIL ACTION  
5 TRANSMISSION CORPORATION, :

6 Plaintiffs, :

7 vs. :

8 EATON CORPORATION, :

9 Defendant. : NO. 06-623 (SLR)

10 - - -

11 Wilmington, Delaware  
12 Monday, June 29, 2009  
13 11:58 o'clock, a.m.

14 - - -

15 BEFORE: HONORABLE SUE L. ROBINSON, U.S.D.C.J.

16 - - -

17 APPEARANCES:

18 DRINKER BIDDLE & REATH LLP  
19 BY: KAREN V. SULLIVAN, ESQ.

20 -and-

21

22

23

24

25

Valerie J. Gunning  
Official Court Reporter

2

1 APPEARANCES (Continued):

2

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16 Counsel for Defendant

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1 ever seen.

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When you use a word too often, it makes me think  
that maybe it's not. But, in any event, I reviewed his  
report as best I could understand it, because he does throw  
a lot of data at -- include a lot of data in his report, and  
it was difficult for me to cull and confirm the argument  
that the defendant has made, that his but-for competitive  
world is a more extensive one than reality and what is the  
alleged anticompetitive world, which is a little upside  
down, and, therefore, needs to be explained, assuming that  
the figures that defendant gave me are correct. And, again,  
I didn't see those exact figures. They were much broader  
figures, so I will need that explained as well.

14

But this is the thing. If, in fact, his report  
really is inconsistent with the principles of Daubert, then  
it seems to me as though this case is over. Without  
damages, the case can't go forward. So I think it's an  
important issue.

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Having reviewed the report, it is confusing  
enough and dense enough that it could be I will do something  
that I have never done before, because usually Daubert  
motions are frivolous, but this one, I think, might need  
significantly more time addressed, perhaps even an  
evidentiary hearing in connection with that, which I know  
some Courts do, I've never done before.

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## 1 PROCEEDINGS

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(Proceedings commenced in the courtroom  
beginning at 11:58 a.m.)

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THE COURT: Good morning. It is still morning  
because we started a bit early.

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Let me share some thoughts with you about the  
sorts of issues I would like to address today.

10

There are three pending motions. There's a  
motion for summary judgment vis-à-vis the statute of  
limitations issue. There's a motion for reconsideration in  
terms of my declining to -- I just brought out some of the  
appendices that were filed in connection with Eaton's  
broader motion for summary judgment. There's a motion to  
exclude plaintiffs' damages expert.

17

To some extent, they're all interrelated, so let  
me share my questions, concerns with you, and, hopefully, in  
addition to whatever prepared remarks you make, you can  
include some of my concerns.

21

With respect to the statute of limitations  
expert, in going through the expert's -- let me pull out his  
name -- Dr. DeRamus. Anyway, I might add for the record  
that I think it's the longest expert opinion I have seen,  
and he used the word "conservative" more times than I have

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But his report also, on numerous occasions, it's  
almost like a mantra, says his damages figures ultimately  
are conservative, highly conservative, most conservative,  
because the defendant's anticompetitive conduct started  
before January 2000 and it goes back to, I think, a 1997  
contract with Mack, or 1998.

7

In any event, he continues to say that he's  
starting at his -- his figures started, his calculations  
started with conduct starting in 2000, but, really, this  
conduct went on in the 1990's. I think he used that phrase  
on more than one occasion.

12

So in terms of the statute of limitations, I  
understand the plaintiffs' argument and, certainly, I have  
agreed with plaintiffs' argument, that according to them, is  
a continuous course of conduct. That at some point, if this  
conduct has gone on for ten years before suit is filed,  
there does have to be a limit to what you collect on  
damages, even if there has been a continuing course of  
conduct.

20

So that's certainly something that I want to  
address with you all.

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I think there are issues of fact which I'm not  
confident it is appropriate for me to address in terms of  
why plaintiff wasn't competitive. I think everyone can  
agree, it wasn't, but the question is why, and certainly

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1 there are facts on both sides of the issue, which is why I  
2 declined to go through more than a foot-full of appendices  
3 to cull that out. I don't think that generally is  
4 appropriate. And the Third Circuit, I think, agrees with  
5 me, to some extent.

6 So, in any event, those are my introductory  
7 comments. I'm not exactly sure what you all were prepared  
8 to address, but I think the statute of limitations and the  
9 damages -- the Daubert motion are kind of interrelated as  
10 well as the motion for reconsideration given the fact  
11 that -- in light of my introductory comment.

12 So all of the motions were the defendant, so I  
13 assume the defendant was prepared to go first?

14 MR. OSTOYICH: Yes, your Honor.

15 THE COURT: All right.

16 MR. OSTOYICH: Joel Ostoyich, from Howrey, for  
17 the defendant.

18 Your Honor, I don't have the precise cite, but I  
19 know the report is long, but if you give me a second, I can  
20 point you to the crystal-clear table in there that has his  
21 but-for price assumption.

22 THE COURT: All right. Well, that's fine.

23 MR. OSTOYICH: It's table 5. It's in his  
24 report, line 9. And it's entitled, But-For Price For Manual  
25 Transmissions, and it has a price by year. I can tell you

7

1 the numbers. They're 3418 in fiscal year 2000 going up to  
2 3776.

3 THE COURT: Oh, I see. It was average but-for  
4 price. Somehow I missed that line. All right.

5 MR. OSTOYICH: All right. So that is the  
6 average but-for price he has for the plaintiffs' sales of  
7 manual transmissions each year in the future, and that price  
8 affects all of his lost profits calculations. They all  
9 depend upon that. He has different measures of market by  
10 volume, but the prices, the multiplier he multiplied them  
11 all out by.

12 Then figure 17 of his report, which is in the  
13 text of his report, plots out the average gross price, not  
14 even the net price, deducting rebates and discounts, but the  
15 gross price for each company to the OEMs, which is in the  
16 \$3,000 range. It's essentially a flat line during the  
17 entire period.

18 THE COURT: All right. I see that.

19 MR. OSTOYICH: So that is the, called  
20 anticompetitive world, where prices, because of Eaton's  
21 conduct are 20, 25 percent lower than the world he wants,  
22 which is the but-for world, with no alleged anticompetitive  
23 conduct.

24 Now, the expert himself conceded in his  
25 deposition, a matter of basic economics, the but-for world,

8

1 without the alleged anticompetitive conduct, by definition,  
2 is more competitive and prices should be lower. We have  
3 case law we've cited to that effect. It's a simple rule of  
4 economics.

5 There really is no explanation that's sufficient  
6 to explain why the price would be 25 percent higher, why  
7 customers would be better off absent the conduct he has  
8 complained about in the case, plaintiffs are complaining  
9 about in the case.

10 So fundamentally, on the face of it, there's an  
11 enormous disconnect. That is a problem for Daubert. It's  
12 contrary to the types of analysis, the theory, economic  
13 theory, that an expert in this field normally applies in  
14 academic studies and so forth.

15 Now, that's actually comparing apples to apples,  
16 just so we're clear. So that's a gross price, the \$3,000 in  
17 the actual world. Bear in mind, Eaton's price is always  
18 lower than the plaintiffs'. That's just a gross price.  
19 When you take out the rebates and the other thing, it's  
20 actually another several hundred dollars lower. So he's  
21 actually positing about a 45 to 50-percent higher price in  
22 the but-for world and not surprisingly, that leads to an  
23 enormous amount of damages.

24 Now, we cited case law on this, your Honor. If  
25 you look at the Murphy Tugboat case in the Ninth Circuit,

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1 Murphy Tugboat affirmed the exclusion of an expert who  
2 assumed that in effect prices would be higher. The issue  
3 there was the expert assumed that the defendant would no  
4 longer compete, and that's exactly what they have done here,  
5 because in reality, in the actual world, if Eaton's prices  
6 are substantially lower, why wouldn't they just lower its  
7 prices to that level in the but-for world.

8 So you've hit on what I think is a key flaw that  
9 requires it to be knocked out and casts doubt, I think,  
10 on -- reenforces some of the other assumptions he made that  
11 are also problematic, in my view.

12 One of those assumptions ties in with the  
13 statute of limitations. He asserts, although I've read the  
14 report pretty carefully and I deposed him, he could not find  
15 it, that Eaton monopolized the heavy duty transmission  
16 markets since the nineties.

17 It's not exactly clear to me what conduct he's  
18 complaining about, but bear in mind that the plaintiffs' own  
19 complaint says that they basically entered these markets in  
20 the late eighties and grew the 20 percent of the market or  
21 so by the late nineties.

22 So if Eaton was a monopolist then and it did  
23 not seem to impede them at all, I'm not sure what he has  
24 pointed to after the fact. If Eaton couldn't block them  
25 during the nineties when it was a monopolist, how is it

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1 able to do so after this period? And, in fact, your Honor,  
 2 we have a board presentation from the president of the  
 3 company that he ignored in his report that shows that six  
 4 months before any of the contracts the plaintiffs are  
 5 complaining about in this case, their share had already  
 6 declined substantially. So from a time perspective,  
 7 chronologically, their growth had stopped and they were  
 8 already shrinking dramatically before the contracts they are  
 9 complaining about.

10 So all of these do seem to me intertwined, but I  
 11 think in my mind, looking at the mistake in the but for  
 12 versus actual pricing, it reinforces that some of the other  
 13 assumptions he has made here don't really seem to make a  
 14 whole lot of sense.

15 Now, the other big thing which we hit in the  
 16 motion to exclude was the lack of disaggregation, and I  
 17 know that there is case law that says if it's not disputed  
 18 that the -- that some of the plaintiffs' losses are due to  
 19 legitimate competition, you don't have to separate those  
 20 out. In other words, if they are complaining about  
 21 everything Eaton did, which seems like a stretch.

22 Some of it we can show you in the contracts is  
 23 not tied to share, it's just lower price. Some of it is  
 24 providing engineers onsite at the customers to help them  
 25 lower their overall cost of making a truck so they can work

11

1 with the engineers at Packer and so forth, some of his six  
 2 sigma efforts, which is a business school effort to lower  
 3 cost. None of that has anything to do with share, targets,  
 4 or anything else.

5 So that type of stuff on its face sounds like  
 6 legitimate competition. Now, he does not distinguish among  
 7 those things, he just says everything Eaton did is  
 8 anticompetitive. But I think you can find as a matter of  
 9 law that some of it on its face is not. That's why we  
 10 briefed summary judgment.

11 Certainly, there's no question that Eaton --  
 12 that they had significant product defects, they cut back,  
 13 they refused to lower prices. They, in fact, raised the  
 14 price substantially of the Freedom line. They stopped  
 15 providing fleet incentives, discounts to the ultimate truck  
 16 purchases.

17 None of that had anything to do with Eaton, but,  
 18 nonetheless, he ignores all of that. It's a little like  
 19 saying the witnesses say five people were in the bank and  
 20 took the money, but I am going to assume, contrary to fact,  
 21 that one person took it all and they are to blame for  
 22 everything.

23 So, fundamentally, there are some major flaws in  
 24 his report. They are beyond the pale, in my view, and the  
 25 but-for pricing is the most obvious of them, but there are

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1 several others that are beyond the pale of what an expert  
 2 economist in an academic institution can submit to a  
 3 peer-reviewed journal and have them approve it. That's why  
 4 I filed the motion.

5 Does that address your concerns? Did you find  
 6 the right pages?

7 THE COURT: I did. Again, it is -- and I've  
 8 seen lots of expert reports and it is one of the denser  
 9 reports I've ever seen, and so I have tried to review it in  
 10 light of the papers filed in connection with it and I will  
 11 continue to try. If need be, I will do something more in  
 12 terms of having the parties come in and actually put this  
 13 expert on the stand.

14 MR. OSTOYICH: Yes. I would welcome that. I  
 15 mean, obviously, from our perspective, if you would like  
 16 to eyeball Dr. DeRamus and see how he answers some of  
 17 these questions and how he explains them, I'm all for  
 18 that.

19 THE COURT: Thank you very much.

20 MR. OSTOYICH: Thank you, your Honor.

21 MR. FASTOW: Thank you, your Honor.

22 Jay Fastow, for the plaintiffs.

23 Let me get first right to your question on the  
 24 but-for, and I think the first point to make is that the  
 25 stakes, I think the Court mentioned on this issue, are not

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1 those. Is that under DeRamus did his damages calculations  
 2 five ways and plaintiff does not show that this issue even  
 3 applies to all five of those methodologies.

4 But I think even beyond that, because it means  
 5 the case would still continue, plaintiffs' argument shows  
 6 a whole misunderstanding of Dr. Ramus' methodologies when  
 7 he does use this issue or when we get to this, because  
 8 plaintiff talks about price. But Dr. Ramus' focus in his  
 9 damages methodologies was not price.

10 As we made clear in our brief and as he explains  
 11 in his report, in his declaration, his focus was on market  
 12 share and profit margins, profit margins, of course, being  
 13 the difference between price and cost, the relationship  
 14 there, and market share not being limited just to particular  
 15 types of transmissions.

16 THE COURT: But isn't, when we're talking about  
 17 damages -- well, I'm sorry. It just strikes me that when  
 18 one assumes that, even if his focus was not on price, to  
 19 prove that there has been antitrust injury, it seems to me  
 20 you have to prove some damage to -- to not just to you, but  
 21 to the market. In other words, that your consumers are some  
 22 way affected by this anticompetitive conduct. But maybe I'm  
 23 misunderstanding.

24 You believe that if you as a competitor are  
 25 harmed, that is a sufficient antitrust injury, and it does

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1 not matter what, ultimately, the effects of the conduct were  
2 on the market on the consumers?

3 MR. FASTOW: I think that question is helpful  
4 for me to address your concern, because the summary judgment  
5 issue that your Honor has addressed and denied, that --  
6 in that, Eaton argued that we had not shown either causal  
7 injury to us or causal injury to the marketplace, injury to  
8 competition, and your Honor denied that, talking about that,  
9 for example, that the use of the LBAs may injure  
10 competition.

11 So I think it's fair to say that we need to show  
12 injury to competition and we need to show injury to us. But  
13 the issue of but-for prices does not relate to the injury to  
14 competition.

15 Dr. DeRamus -- well, I mean, it's relates,  
16 but not for this purpose, for the Daubert purpose.  
17 Dr. DeRamus talks at length about impact of Eaton's conduct  
18 on truck buyers, right, because, of course, Eaton and the  
19 OEMs were engaged in concerted activity, conspiracy, and  
20 that Dr. DeRamus talks in a number of paragraphs in his  
21 report about the impact of all of that on the truck buyers  
22 and how it hurt the truck buyers.

23 And so that's the issue we would say --

24 THE COURT: And so that is what I should be  
25 focusing on, not on any injury to the OEMs, but on injury to

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1 standard of proving the amount of damages.

2 The fact of injury is one thing, but once we  
3 get past injury to competition, here, principally, to the  
4 truck buyers and injury to us, then the amount of damages,  
5 which is what is the issue today, is a standard of  
6 liberality.

7 And one of the things that you see that  
8 plaintiffs really don't focus on here is the applicable  
9 law.

10 So we have the Kresky case talking about the  
11 lenient standard under the leading Supreme Court case of  
12 Zenith versus Hazeltine. And this gets back to the point  
13 that the defendant can complain about a lack of precision in  
14 proving the amount of damages when it's the one who  
15 disrupted the market, who royaled the market and created  
16 uncertainties in the first place.

17 Then we get to the issue of the Oddi case in the  
18 Third Circuit, where the Third Circuit said, Daubert isn't  
19 about the correct test, the best test, it's just about basic  
20 liability.

21 THE COURT: Well, trust me when I say I'm  
22 not a fan of Daubert, but this was one report that I found  
23 more confounding than I found it helpful. I've never been  
24 faced with a report like it, which is why it caught my  
25 attention.

15

1 the ultimate consumer, the truck buyers, and by the end of  
2 the hearing, if you could just point out to me those  
3 paragraphs, that would be helpful.

4 MR. FASTOW: Yes, your Honor. I can get you  
5 that, hopefully, very quickly.

6 THE COURT: All right.

7 MR. FASTOW: But I think that that is what the  
8 defendants are mixing in together, is the injury to the  
9 truck buyers, because we know that -- here we are.

10 If you look at his report at Paragraph 215, 233  
11 to 237, 215 to 233 to 237 and 247 to 250, maybe other spots  
12 as well, he talks about the impact of all of this on the  
13 ultimate consumer, the truck buyer.

14 Now, separately on the Daubert issue, proof of  
15 damages -- Eaton is not trying to argue, as I understand it,  
16 relationship to the truck buyers here, they're trying to  
17 say, talk about the damage calculations by us, so that if we  
18 establish injury to competition, we're then entitled to show  
19 that if there was causal injury to us by the same conduct,  
20 that we can get damages.

21 And we know that the Supreme Court, in Zenith  
22 versus Hazeltine, the Third Circuit in Lepages and so forth,  
23 have all held that in -- the Kresky case, that once we can  
24 show injury to competition and causal injury to us by the  
25 conduct, injury to competition, then there's a very liberal

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1 So generally, I mean, in my patent cases, they  
2 file cross-motions in Daubert against each other's expert so  
3 there's no expert left, and, to me, that is a waste of my  
4 time. I think generally it should be a jury who resolves  
5 credibility issues so long as I understand the mechanics.

6 I don't really understand the mechanics in a  
7 150-page report, so it could be your expert just gave me too  
8 much and it could be I need for him to come in. But I do  
9 understand what you are saying, that the amount of damages  
10 is something that a jury should decide so long as the  
11 fundamental assumptions that there has been injury have been  
12 established.

13 MR. FASTOW: Right. I would think that is the  
14 summary judgment motion that your Honor has already decided,  
15 where Eaton contested both injury to competition and injury  
16 to, causal injury to us, and your Honor denied that motion.  
17 So this just goes, we submit, to the amount of damages under  
18 the Daubert standard.

19 All right. Now, let me just go on with some of  
20 the points on this, because it's really even -- what  
21 plaintiff does, even when we talk about this particular  
22 damages calculation, which they said is not his only damages  
23 calculation. And I think when your Honor picked up on the  
24 word conservative, what that meant was that he did his  
25 damages calculations a number of different ways, as is

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1 cross-checking, and so that when we did it five different  
2 ways and they all came out plus or minus, more or less, in  
3 the same range, I think that's what he meant, for example,  
4 by being conservative, is that he wasn't just going with one  
5 theory and saying this is it. He cross-checked it.

6 Another way of being conservative is, for  
7 example, plaintiffs argued that the multiplier on the  
8 Enterprise value should be as of February 2009. And he  
9 said, well, that is actually -- the way he did it was  
10 conservative, because if we just took the time -- I'm sorry.  
11 If he just took 2006, the number actually have been would  
12 higher, his damages numbers would have been higher.

13 So I think that's what he meant by being  
14 conservative, is that he was saying, I'm not pressing the  
15 envelope here, I am taking positions that might cost me a  
16 little bit of money in terms of my damages calculations,  
17 but it puts me on solid, and even more solid ground, and  
18 I've done it different ways, again, to show you that I'm on  
19 solid ground.

20 Now, what plaintiff is doing on this but-for  
21 pricing issue, again, it's not in the context of injury to  
22 competition, it's in the context of his damages  
23 calculations, and they are misunderstanding his calculation  
24 because, as I said, his focus, as he says, is on profit  
25 margins and market share. It's not just on price and it's

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1 not just on particular types of transmissions.

2 And as he said in his deposition, and we lay  
3 this out in our brief at Pages 11 and 27 -- he was asked  
4 these questions about this issue. And he said, first of  
5 all, the results we're comparing were taken from two  
6 different data sources, so they're not comparable, one to  
7 the other.

8 And that's his deposition at Page 35 and 36.

9 Then he said, and, by the way, they're only  
10 talking about certain kind of manual transmissions. He  
11 said, if you look at the Freedom line transmission, which  
12 is an automated mechanical transmission, he says that  
13 the actual prices for the Freedom line transmission appear  
14 higher than but-for comprises prices. And on a weighted  
15 average, when you weigh the various products, the higher  
16 actual prices of the Freedom line transmissions more than  
17 offset the lower actual prices of the manual transmissions,  
18 making, to use a word I know your Honor does not like, his  
19 damages calculation conservative, meaning lower than it  
20 might have been, because when you include the rest of the  
21 mix, it works out to be lower, not higher.

22 And then there's yet another point that he  
23 mentioned, and this is where, under the law, as we've  
24 discussed, defendant can't say, well, you have not proved  
25 things with precision, because defendant is the one who

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1 royaled the market.

2 Well, one of the things that the business plan  
3 talked about was the possibility of plaintiffs increasing  
4 their product line even with respect to other manual  
5 transmissions. And those transmissions might have been more  
6 expensive multi-speed mechanical transmissions, but because  
7 we were driven out of business, maybe that didn't happen, it  
8 prevented us from expanding the product line, so the actual  
9 prices only took into account the less expensive manual  
10 transmissions rather than the more expensive ones we might  
11 have been selling but for defendant's conduct.

12 So I think when you look at all of that, Dr.  
13 DeRamus addressed this very directly, and what we see is  
14 plaintiff similarly mischaracterizing his approach,  
15 misunderstanding his approach, if you will, which is  
16 not based just on price, but on profit margin and market  
17 share.

18 And when you look at the entirety of the product  
19 line, he says he's very comfortable that it works out, in  
20 fact, makes it a lower damages estimate rather than might  
21 have been.

22 So, your Honor, I think that what we hear is  
23 an effort to mix different concepts, injury to competition  
24 with calculation of damages when we know that the legal  
25 standard is quite different for a calculation of damages,

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1 and that Dr. DeRamus, whatever word we want to use, did not  
2 push the envelope, did not make an assumption that makes no  
3 sense, as Eaton would say, but when you look at all of the  
4 products and you look at the data that's comparable, it  
5 makes perfect sense.

6 And, of course, as I mentioned, he did his  
7 calculation various ways.

8 Now, a couple of other points I will mention  
9 that were raised. On disaggregation, this is plaintiff,  
10 again, just rearguing. That's why he says it's interrelated  
11 with the motion for reconsideration, because that's exactly  
12 what's happening. Again, just rearguing, we didn't do it.  
13 We did not do anything anticompetitive.

14 Well, we know that the Third Circuit has said  
15 in Lepages, in Callahan, in Rossi, that that disaggregation  
16 is not necessary in a case like this. That Lepages said  
17 that in that case, it would be unnecessary, if not  
18 impossible.

19 And we further know that Dr. DeRamus did look  
20 at facts, not only facts that we like, but facts that Eaton  
21 points to. For example, he looked at warranty issues. He  
22 looked at the scope of product line issues. He looked at  
23 Freedom line pricing issues.

24 If you look at Dr. DeRamus' declaration on this  
25 motion, Paragraphs 21 through 25 --



22

1 THE COURT: Well, I didn't want to look at  
2 anything but the report, and, quite frankly, his report was  
3 in stark contrast to the undisputed facts submitted by the  
4 defendant in connection with his motion for summary judgment  
5 in saying that the -- you know, about the most successful  
6 automated manual transmission in the world and that it was  
7 Eaton's -- well, anyway, it did not sound to me, in going  
8 through 150 pages, that Dr. Eaton took into account much of  
9 anything negative in terms of plaintiffs' struggle to  
10 maintain its competitive edge in this market. So I'm not  
11 looking at declarations, I'm looking at his report, because  
12 that's basically what we are talking about.

13 MR. FASTOW: Well, your Honor, if I can just  
14 refer you, then, to his report.

15 THE COURT: All right.

16 MR. FASTOW: At Paragraph 196, in Sections 8  
17 through 10, he talks about that he considered both facts,  
18 that plaintiffs advocated facts that Easton would like to  
19 advocate. But I think the further find is that the  
20 law in the Third Circuit simply doesn't require that.

21 And so that even if he had looked at nothing  
22 plaintiff likes, we have the Walker case. Bear with me one  
23 second.

24 (Pause.)

25 MR. FASTOW: I'm sorry, your Honor. I will be

23

1 right there.

2 THE COURT: That's all right.

3 MR. FASTOW: The Walker case in the Third  
4 Circuit --

5 THE COURT: I'm sure that there is a Third  
6 Circuit case that stands for just about any proposition.

7 MR. FASTOW: Well, this one says that an expert  
8 is permitted to base his opinion on a particular version of  
9 disputed facts and the weight to be accorded that opinion is  
10 for the jury.

11 THE COURT: I agree with that so long as it's  
12 not -- so long as the facts he is basing it on are facts  
13 that are admissible facts. In other words, if you've got  
14 admissible fact versus non-admissible fact, it seems to me  
15 as though there's a problem with that. But I agree with  
16 that proposition, that you each have a story to tell and  
17 expert is going to be telling your story, not your  
18 opponent's story. So I agree with that.

19 MR. FASTOW: And, your Honor, just to follow  
20 up on that one point, under Rule 702, an expert is not  
21 limited to relying on admissible facts, but he can also rely  
22 on other facts that are reliable, that can reliably be  
23 relied on by an expert in his field.

24 THE COURT: Right. To a point. I mean, at some  
25 point, it's not appropriate. There has to be some -- it

24

1 does have to be reliable information even if it's not  
2 admissible. I'm hard pressed to make the distinction  
3 sometimes, but I agree with that.

4 MR. OSTOYICH: And I think what Eaton is arguing  
5 isn't that he relied on facts that are not admissible or  
6 reliable, but Eaton is saying that he did not rely on the  
7 facts that we, Eaton, liked.

8 And, number one, I'm saying that that is not  
9 true, as his report points out. And, number two, the Third  
10 Circuit says he does not have to, that you can ask him about  
11 that in front of the jury. And certainly, when we get to  
12 questions of disaggregation, in an antitrust case, I think  
13 we need to step back and put all of this in two pieces of  
14 context.

15 One is, the context of Oddi in the Third Circuit  
16 saying we're not talking about the best or correct,  
17 number one.

18 And number two is Zenith versus Hazeltine and  
19 Lepages and Kresky, where the standard for calculation of  
20 damages is liberal. This is not a strict standard. This  
21 is a -- so we sort of have a double liberality here, one in  
22 terms of the Daubert standard, and we're not looking at best  
23 or correct; and, number two, in terms of the ultimate  
24 substantive standard of proving amount of damages, which  
25 is liberal because the defendant has royaled the market,

25

1 so it can get up and say, your Honor, this is not precise  
2 enough, this isn't good enough. It's unclear.

3 THE COURT: Well, assuming that you are not  
4 prepared to withdraw any of his alternate theories of  
5 damages, and if I don't understand how they all interact,  
6 then doesn't it make sense for me in my gatekeeper position  
7 to really bring him in and have it explained to me so I can  
8 be assured of the fact that maybe it may be conservative to  
9 you, but pretty large damages figures that you are going to  
10 present to a jury really do satisfy, the based on reliable  
11 evidence and sound economic principle standard?

12 MR. FASTOW: If your Honor thinks that would  
13 be useful to you, then we're prepared to bring him and have  
14 him explain it in person. We think that's just fine and we  
15 can probably do it in fewer pages than the report currently  
16 is, because I think that when you distill it down, you will  
17 see it's very simple, straightforward, and accurate.

18 THE COURT: I would love to see that.

19 One other question I have for you, and that is  
20 in terms of this -- I mean, we have conduct that has been  
21 talked about going back to the 1990's, and I understand that  
22 a continuing violation, you can go back to bring all this  
23 information in. But isn't there some ending? I mean, isn't  
24 there some limit to the damages you can establish even with  
25 a continuing violation?

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1 MR. FASTOW: Well, I think, your Honor, the rule  
2 that we would look at here is, as your Honor talked about in  
3 Dentsply and the Third Circuit talks about in Penn Dental,  
4 is that each time a plaintiff is injured by a continuing  
5 conspiracy, continuing violation, to violate the antitrust  
6 laws, a new cause of action for damages accrues.  
7 We had it in the Hanover Shoe case from the  
8 Supreme Court, but although Hanover could have sued in 1912  
9 for the injury that it inflicted, it equally was entitled to  
10 sue in 1955. And in the Toledo Mack case in the Third  
11 Circuit, the continuing violation doctrine allowed the suit  
12 to continue even though plaintiff knew of the alleged  
13 violation at least 13 years before it filed the case.

14 THE COURT: That's why antitrust cases are just  
15 my very favorite cases. Anyway, all right. So that's your  
16 explanation.

17 And Dr. -- your expert goes back to when?

18 MR. FASTOW: He goes back to 2000, your Honor, I  
19 believe, is the calculation.

20 And the answer to Eaton's argument is that --  
21 there are a couple of them. They say, well, if it started  
22 before, then wasn't it over, then?

23 Well, we just read the cases that talk about the  
24 continuing violation issue, and, of course, if they continue  
25 to make the -- do the same conduct and do it even worse,

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1 then you can have increased injury and damages, so that  
2 if you do something one way and then you do it much stronger  
3 and tighter, you can have, of course, more damages and more  
4 implication both to the plaintiffs and to the marketplace  
5 itself, truck buyers and injury to competition.

6 THE COURT: And at this point, truly, it is not  
7 the OEMs at all, it is the truck buyers and the price -- I  
8 mean, I guess I don't understand his report well enough to  
9 understand what price are -- the prices that he uses are the  
10 prices that are paid by the OEMs or by the truck buyers  
11 themselves on the table 5, the but -- average but-for price?  
12 Whose price is that?

13 MR. FASTOW: I think the prices he's looking for  
14 are the prices paid by the OEMs, and then they resell the  
15 truck as a truck to the truck buyers.

16 THE COURT: But he does not -- all right.

17 MR. FASTOW: But he's looking, your Honor, I  
18 think, at the prices we get or would have gotten.

19 So the focus here -- see, that's why it's a  
20 different issue, is the focus here is not so much on  
21 the injury to competition, but it is on the injury and  
22 damages to us, so he's looking at the lost profit margin  
23 to us.

24 THE COURT: All right. So --

25 MR. FASTOW: And if I could, your Honor, it's

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1 not just the truck buyers, because we contend also that the  
2 OEMs were hurt. They were pushed, cajoled -- you know, we  
3 have a whole lot of words there -- into doing what they were  
4 doing, but at the end of the day, the OEMs now don't have us  
5 as competition.

6 So we submit that they were hurt as well. And  
7 the truck buyers were the next stop that -- first, let's  
8 call it non-conspiratorial stop of the transmissions, Eaton  
9 and the OEMs beings in a conspiracy and the truck buyers  
10 being the first stop after that, and they were the ones who  
11 were ultimately hurt. So we do contend that the OEMs  
12 themselves were hurt even though they were part of the  
13 conspiracy.

14 THE COURT: And may I just ask a question out of  
15 curiosity? I understand that your settlement negotiations  
16 have gone no place, but when you look at the papers, and I  
17 think about if I were a client, the kind of information that  
18 you all are going to share about each other and the fact,  
19 whether the jury believes it or not, that plaintiff just  
20 fell down on the job and didn't offer customer services,  
21 didn't offer good product, go on and on, and apparently at  
22 least the good doctor says the same thing about Eaton -- I  
23 assume that this is of no concern to you and that trial,  
24 in fact, is the way to go?

25 MR. FASTOW: Well, your Honor, we're always open

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1 to an appropriate settlement discussion.

2 THE COURT: Well, I suspect you are not going  
3 to get one with this kind of damages report, but, all right.  
4 It just struck me that, I frankly, wouldn't want that  
5 information on the front page.

6 All right. Well, so I think what I need to  
7 do is have Dr. DeRamus come in because I, frankly, find  
8 his report, as I said, the longest, densest, most confusing  
9 report I've had to deal with in my 18 years on the bench.

10 So I need to find a time when -- when is the  
11 pretrial in this case?

12 MR. FASTOW: I believe it is August 27th, your  
13 Honor.

14 THE COURT: Let me get my computer on. I'm  
15 sorry.

16 (Pause.)

17 THE COURT: And this will take some time, so if  
18 anyone has something they want to talk to me about, this  
19 would be the time, until I find a date to bring him in.

20 MR. OSTOYICH: May I address a couple of points?

21 MR. FASTOW: Just one other point, your Honor.

22 MR. OSTOYICH: Oh.

23 MR. FASTOW: On your question about isn't there  
24 a time when the damages would end, I just want to be clear  
25 that it's our position that during the limitations period,

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1 all injury incurred within the limitations period is subject  
2 to our damages claim whether or not, you know, it came in  
3 whole or in part from conduct during the limitations period  
4 or prior to the limitations period.

5 THE COURT: All right. I just want you to  
6 understand that having been on the bench for as long as I  
7 have been, I approach economists with a certain degree of  
8 healthy cynicism, and when an economist's damages figures  
9 are high and yet he continues to use the word  
10 "conservative," I particularly -- it kind of raises the  
11 hackles on the back of my neck.

12 So to some extent, you all have brought it on  
13 yourself, this close scrutiny, but I think it is well  
14 deserved. It is, I think, a bit on the greedy side, and  
15 it's not even explained well enough to me to get the gist  
16 of it.

17 So here we go.

18 MR. FASTOW: All right, your Honor. We will  
19 eliminate that word from the vocabulary. You said replace  
20 it with the liberal treatment of antitrust damages.

21 THE COURT: Yes. I guess that's better, but not  
22 much.

23 All right.

24 MR. OSTOYICH: Can I just quickly, your Honor,  
25 address two points?

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1 THE COURT: Yes.

2 MR. OSTOYICH: First, it's interesting to me  
3 that the focus of this -- I still didn't really hear an  
4 explanation for why he makes an assumption of the but-for  
5 prices to the OEMs being 25, 30 percent higher, why that's  
6 legitimate. I also didn't really hear an explanation why  
7 that's in the truck customers' interest, that the input for  
8 the product they are buying is now going to be 40 percent  
9 higher than it was when Eaton was behaving the way they are  
10 complaining about.

11 Particularly problematic in my mind, I just  
12 went through 60-odd depositions in this case, and there  
13 was not a single truck customer on plaintiffs' initial  
14 disclosures and they did not depose a single truck customer.

15 So I am not sure where Dr. DeRamus is going to  
16 have evidence of what the truck customers like or don't like  
17 in an admissible way that I've had a chance to cross-examine  
18 people on. Just common sense, they're not going to like it  
19 if prices for the product are going to go up commensurate  
20 with a 40-percent increase in the input cost for  
21 transmissions.

22 So that's point number one. Truck customers  
23 aren't here. But if they were, they probably wouldn't like  
24 higher price of transmissions in the trucks because it means  
25 the trucks are going to cost more.

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1 On a statute of limitations issue, a couple  
2 things. The main one is that if there is an act that occurs  
3 prior to the statute that causes injury during the statute,  
4 that can be recoverable in certain circumstances. The  
5 circumstances are the cases they cited. Those are refusals  
6 to deal with cases where the act is a refusal, and by  
7 definition, it continued into the statutory period.

8 This case is very different. It's like the  
9 Kaiser and El Paso cases and like the Varner cases that we  
10 cited. The contracts were struck in 2000, 2001, for Freight  
11 Liner Packer international. The terms didn't change. The  
12 terms stayed the same. After that, the customers placed an  
13 order. We filled the order.

14 At the time the contract was struck, the general  
15 counsel of the parent company sent a letter to Eaton's  
16 general counsel saying, the contract you just struck or are  
17 about to strike is anticompetitive, in our view, but they  
18 waited six years before filing the case.

19 I have not heard any explanation. There's  
20 nothing in the record that explains any legitimate reason  
21 for just sitting back and waiting. That's exactly what the  
22 statute of limitations are designed to prevent.

23 I don't know what the theory is for just  
24 waiting. Maybe they did not really think they were going  
25 to take it and they decided to see how they did over the

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1 next six years. That's one possible alternative. But, in  
2 any event, they complained about the contracts and just  
3 waited.

4 So whatever harm occurred, by their own  
5 admission, the general counsel believed accrued  
6 six-and-a-half years before he filed suit. So it is a very  
7 different situation than the cases they are citing.

8 THE COURT: All right.

9 MR. OSTOYICH: Thank you.

10 MR. FASTOW: Your Honor, may I?

11 THE COURT: Yes, you may.

12 MR. FASTOW: Just on the statute of limitations  
13 points.

14 First of all, refusal to deal, defendant argued  
15 that before, didn't explain why that should make any  
16 difference. The case we cite discussed the general  
17 antitrust principles of limitations. But Eaton seems  
18 to forget that, of course, among other things a key part of  
19 this case is Eaton getting the OEMs not to deal with us or  
20 at least to deal with us much less than they would have.

21 So their refusal-to-deal argument does not take  
22 them anywhere.

23 Now, number two is they talk about the Kaiser  
24 case and so forth. That case has been distinguished by the  
25 Third Circuit. Those cases by the Third Circuit in the

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1 Harold Friedman case, because what we had in those cases was  
2 a situation where the plaintiff was a party to the contract  
3 that plaintiff was contending caused the injury.

4 And I think it's Paragraph 41 -- I'm sorry --  
5 footnote 41 in Harold Friedman. The Third Circuit says,  
6 yes, that's different, because here, of course, we're not a  
7 party to those contracts. It's much more like the Dentsply  
8 case, where you had the defendant there saying, well, my  
9 dealer criteria were final and binding in 1993 and you  
10 didn't sue until 1999.

11 Your Honor said, no, I'm not going to dismiss  
12 this case because the enforcement of the dealer criteria was  
13 going on through the period and that was a new act and new  
14 injury.

15 And similarly here, your Honor, in your summary  
16 judgment decision, talked about the use of the LBAs, a very  
17 analogous here. So the Third Circuit has rejected that  
18 argument as well.

19 And then the just waiting argument, well, I  
20 just think I talked about the Hanover Shoe case, where the  
21 Supreme Court said it was okay to wait for 43 years. And  
22 the Third Circuit in Toledo Mack, waiting 13 years.

23 Waiting and knowledge are not the touchstone of  
24 the accrual of the claim. The accrual of the claim, as the  
25 Third Circuit said in Penn Dental and your Honor said in

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1 Dentsply, is the injury. When the injury occurs, that's  
2 when you can sue and if there's continuing injury, then you  
3 can continually sue.

4 And so when we talk about waiting  
5 five-and-a-half years, it's simply irrelevant, it's a red  
6 herring to this issue, because the question is when the  
7 injury occurred, and for injury that occurred during the  
8 limitations period, we're entitled to sue for those damages.  
9 And as Eaton just conceded, that can be, depending on --  
10 whether or not the acts that caused that injury were in the  
11 limitations period or before the limitations period. It's  
12 the injury that counts because, after all, you can't sue for  
13 antitrust damages until you suffer the injury that you are  
14 suing for.

15 And if you can't sue for the damages, the  
16 limitations clock can't start running on you at least until  
17 you could bring the suit. So it makes a lot of sense that  
18 it's the injury that's the touchstone, not alleged  
19 knowledge.

20 And even this letter, and what this letter  
21 says -- to put it another way, what the letter does not show  
22 is knowledge of everything that has happened. The letter  
23 was, I think, in 2001. All right. Obviously, there has  
24 been a lot of conduct before the limitations period and  
25 through the limitations period since then.

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1 What the letter shows is Eaton's willful  
2 violation of the antitrust laws. They were on notice under  
3 their position, their assertion. They say, he told us, he  
4 told us, and Eaton said, we're going to go ahead anyway.  
5 We're going to go ahead and strangle this marketplace.  
6 We're going to monopolize and conspire restraint of trade,  
7 harm you and harm competition regardless. So that's even  
8 under Eaton's own position.

9 Thank you, your Honor.

10 THE COURT: It looks as though -- well, I'm  
11 wondering if you all have available Tuesday, July 21st? I  
12 have argument already scheduled in the morning, so this  
13 would be in the afternoon, starting at 2:00 o'clock.

14 Do you all want to go back and see if the doctor  
15 would be available and let my staff know? I will set it  
16 aside in the meantime. Tuesday, July 21, starting at 2:00  
17 o'clock.

18 MR. FASTOW: Okay, your Honor. We will note  
19 that and be right back to you.

20 THE COURT: All right. And I will issue an  
21 order once I get confirmation that you all can make it.

22 MR. FASTOW: Great. Thank you, your Honor.

23 THE COURT: I know you all had prepared remarks.  
24 Are there any other remarks you care to make since I only  
25 have taken an hour of your time?

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1 MR. OSTOYICH: No. I think you've covered, from  
2 the defense side, I think you've covered it. We had not  
3 specifically talked about reconsideration.

4 The first -- let me just, briefly, the first  
5 part of the recovery sentence that we cited in our brief --  
6 maybe I didn't convey this clearly enough in the papers,  
7 but we clearly intended to set out that we were challenging  
8 all of the elements, including the monopoly power element,  
9 but we're focusing, because we're trying to keep it  
10 truncated per your Honor's practice, keep it truncated and  
11 focus on the antitrust.

12 So as a result, there has been a  
13 miscommunication. If that's so, I apologize, but that is, I  
14 think, a factual mistake in our communication.

15 THE COURT: All right. Well, in preparing for  
16 this evidentiary hearing, I will go back and review  
17 everything, and if I find it helpful in terms of setting out  
18 the landscape that I think we all should be on, I will issue  
19 something. Otherwise, I will wait and hear more.

20 MR. OSTOYICH: Fair enough. Thank you, your  
21 Honor.

22 THE COURT: How about from plaintiffs'  
23 perspective?

24 MR. FASTOW: Your Honor, just briefly on  
25 reconsideration, since Eaton raised that, in their requested

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1 reply, they say they raised two issues, but, of course, in  
2 their motion, they ask for reconsideration of the whole  
3 motion, whether plaintiffs have shown that there is genuine  
4 issue of material fact that Eaton's contracts had an  
5 anticompetitive effect, as required by Lepage's.

6 So, again, to avoid conclusion, their initial  
7 motion for reconsideration was asking for reconsideration of  
8 the whole thing, not for two limited issues.

9 Then Eaton speaks about undisputed monopoly  
10 power. Well, they didn't disputes it on summary judgment  
11 with evidence or even with argument. And that's what's also  
12 interesting is, well, Dr. DeRamus talked about it and  
13 concluded, came to conclusions on market definition and  
14 monopoly power. Defendant submitted two expert reports and  
15 neither of them contests monopoly power.

16 So when they talk about undisputed monopoly  
17 power, there is no genuine dispute of monopoly power here.  
18 And I hope what we're not hearing is just a desire to take a  
19 lot of time from the Court and us and the jury over an issue  
20 that's not genuinely in dispute.

21 As to exclusionary conduct like the bundled  
22 rebates in Lepage's, well, we think your Honor is absolutely  
23 correct. The conduct we've talked about is exclusionary  
24 conduct as was the conduct like the conduct in Lepage's.  
25 And that's really -- I think, the answer is that there is no

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1 basis for summary judgment for them on those grounds, and  
2 your Honor was right.

3 THE COURT: All right. Anything else from you  
4 all?

5 MR. OSTOYICH: Can I, at the risk --

6 THE COURT: Yes.

7 MR. OSTOYICH: -- he said, he said, but just to  
8 correct one thing. Our experts, both of them, said that  
9 Dr. DeRamus had not conducted an economically valid study  
10 of monopoly power in market share. He did not employ the  
11 tests under the Department of Justice guidelines. He did  
12 not employ a significant non-transitory pricing test, or  
13 any other test for determining it. So I just want to be  
14 clear.

15 And we specifically said in both our letter and  
16 in the brief that we were going to challenge it and  
17 challenge it hard, because you'll see when we bring Dr.  
18 DeRamus in, he has a hard time defending some of his  
19 assertions.

20 So I don't think we need to belabor it, and I  
21 don't mean to do that, but I do want to correct something  
22 so there's no misstatement about this on the record. We  
23 will be challenging that argument.

24 Thank you.

25 THE COURT: All right. Thank you.

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1 And I just want to give you an alert. It could  
2 be that I'd want to start the hearing at 1:00, not 2:00.  
3 I've got to check to see how much time I gave the parties in  
4 the prior case. So I don't want this to run, and I've got  
5 to figure out how much time to give you. But I will issue  
6 an order making sure you have some guidelines before you  
7 walk into Court.

8 All right, counsel. Thank you very much for  
9 your patience. I look forward to seeing you.

10 (Counsel respond, "Thank you, your Honor.")

11 (Court recessed at 12:53 p.m.)

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# EXHIBIT 3

REDACTED  
IN ITS ENTIRETY

# EXHIBIT 4

1/9/2009

ZF Meritor LLC et al v. Eaton Corporation Richard Martello

Confidential

Page 1

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF DELAWARE

-----X  
ZF MERITOR LLC and MERITOR :  
TRANSMISSION CORPORATION, :  
 :  
Plaintiff, : Civil Action No.  
 : 06-623-SLR  
vs. :  
 :  
EATON CORPORATION, :  
 :  
Defendant. :  
-----X  
CONFIDENTIAL

Washington, D.C.

Friday, January 9, 2009

Videotape Deposition of:

RICHARD MARTELLO,

the witness, was called for examination by counsel  
for the Defendant, pursuant to notice, commencing  
at 9:11 a.m., at the law offices of Dickstein  
Shapiro LLP, 1825 Eye Street, Northwest,

Washington, D.C. 20006, before Dawn A. Jaques,  
Certified Shorthand Reporter and Notary Public in  
and for the District of Columbia, when were  
present on behalf of the respective parties.

-----  
DIGITAL EVIDENCE GROUP  
1111 16th Street, NW Suite 410  
Washington, DC 20036  
(202) 232-0646



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<p style="text-align: right;">Page 6</p> <p>1 PROCEEDINGS</p> <p>2 THE VIDEOGRAPHER: We are on the record.</p> <p>3 This is the videotape deposition of Rick Martello.</p> <p>4 My name is Billy Fahnert. I am the videographer</p> <p>5 here today. The court reporter is Dawn Jaques.</p> <p>6 We both represent Digital Evidence Group, located</p> <p>7 in Washington, D.C.</p> <p>8 This deposition is being recorded in the</p> <p>9 matter of ZF Meritor LLC, et al., versus Eaton</p> <p>10 Corporation, in the United States District Court</p> <p>11 for the District of Delaware, Case No. 06-623 SLR.</p> <p>12 Today's date is January 9th, 2009. The</p> <p>13 time on the camera is 8:56 a.m.</p> <p>14 Will counsel please identify yourselves</p> <p>15 for the record and the witness may be sworn in.</p> <p>16 MR. OSTOYICH: Joe Ostoyich from Howrey</p> <p>17 LLP for Defendant Eaton Corporation.</p> <p>18 MS. DUNCAN HACKETT: Jennifer Hackett</p> <p>19 from Dickstein Shapiro, LLP, for Plaintiffs.</p> <p>20 MR. HOLCOMB: Bruce Holcomb from Adams</p> <p>21 Holcomb, LLP.</p> <p>22</p>	<p style="text-align: right;">Page 8</p> <p>1 Q I've seen your job history on some of</p> <p>2 the documents that the plaintiffs produced in the</p> <p>3 case, but I want to make sure I've got a general</p> <p>4 understanding.</p> <p>5 Now, I understand your education is an</p> <p>6 engineering background. You've got a degree in</p> <p>7 engineering?</p> <p>8 A A bachelor's degree in engineering and a</p> <p>9 master's degree in business administration with a</p> <p>10 major in finance.</p> <p>11 Q What, what sort of engineer are you,</p> <p>12 sir?</p> <p>13 A Industrial engineer.</p> <p>14 Q And where did you get your bachelor's</p> <p>15 degree in industrial engineering?</p> <p>16 A General Motors Institute, Flint,</p> <p>17 Michigan.</p> <p>18 Q And did you subsequently work for</p> <p>19 General Motors after getting that degree?</p> <p>20 A Worked for them for five years as a</p> <p>21 co-op and one year -- one, one and a half years</p> <p>22 after that.</p>
<p style="text-align: right;">Page 7</p> <p>1 Whereupon,</p> <p>2 RICHARD MARTELLO</p> <p>3 was called as a witness, after having been</p> <p>4 first duly sworn by the Notary Public,</p> <p>5 was examined and testified as follows:</p> <p>6 EXAMINATION BY COUNSEL FOR THE DEFENDANT</p> <p>7 BY MR. OSTOYICH:</p> <p>8 Q Mr. Martello, good morning.</p> <p>9 A Good morning.</p> <p>10 Q Can you for the record and for the court</p> <p>11 reporter, can you state your full name and your</p> <p>12 home and your work addresses for me?</p> <p>13 A My name is Richard Martello. My home</p> <p>14 address is 200 Plantation Drive, Southern Pines,</p> <p>15 North Carolina. I am retired, so it is also my</p> <p>16 work address.</p> <p>17 Q Well, congratulations. So you're not</p> <p>18 currently employed? You're not doing any</p> <p>19 consulting or any type of work?</p> <p>20 A Been retired for four and a half years.</p> <p>21 Q Play golf down there?</p> <p>22 A I play just about every day.</p>	<p style="text-align: right;">Page 9</p> <p>1 Q And what were your positions? What sort</p> <p>2 of job were you doing for General Motors?</p> <p>3 A I worked as a computer analyst.</p> <p>4 Q When did you get your bachelor's degrees</p> <p>5 in industrial engineering?</p> <p>6 A I guess in 1968.</p> <p>7 Q And so you worked for GM after that</p> <p>8 from '68 to about '74 or so?</p> <p>9 A Yeah -- no. Somewhere in there, yeah,</p> <p>10 about 1970, I would think.</p> <p>11 Q And where did you go after that</p> <p>12 position?</p> <p>13 A Spent a few years at Burroughs</p> <p>14 Corporation in Detroit. Then I went to a company</p> <p>15 called Gemini that made the General Motors motor</p> <p>16 home. Then the energy crisis hit and knocked us</p> <p>17 out of business, and I went to work for Rockwell</p> <p>18 International.</p> <p>19 Q Were you working in the axle business at</p> <p>20 that time or somewhere else?</p> <p>21 A No. I started at the headquarters in</p> <p>22 Detroit, Michigan, as a manufacturing specialist,</p>

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<p>1 and then went to work for brake division in 2 Ashtabula, Ohio. Then I moved into front axles 3 and rear axles. Moved probably eight, ten times 4 for Rockwell.</p> <p>5 Q And what -- generally, what were your 6 positions? Were you on the engineering side of 7 the --</p> <p>8 A No, I was always in operations. I went 9 from manufacturing engineer to manufacturing 10 engineering manager to operation manager to plant 11 manager, and was a plant manager in two different 12 plants.</p> <p>13 Then went to -- went to headquarters in 14 1988 as a General Manager in the Axle Division, 15 Manufacturing Manager in the Axle Division. And 16 then through various reorganizations, was Vice 17 President of Worldwide Manufacturing for a while; 18 was General Manager of Axles; General Manager of 19 Transmissions, Clutches and Drivelines; Vice 20 President of Engineering and Purchasing; numerous 21 jobs while I was still working in Troy.</p> <p>22 Then in, let's see, 1995, I became</p>	<p>1 time, when you were the GM of the Transmissions, 2 Clutches and Drivelines for Rockwell, was it your 3 responsibility to determine what products to make 4 and how to price them, or would that have been the 5 sales and marketing folks?</p> <p>6 A It was always a combined effort, but the 7 final decision was -- the final decision was the 8 responsibility of the general manager.</p> <p>9 Q Just so we're clear, that was --</p> <p>10 A Plus, you know, with concurrence with 11 his boss too. Sales could always take it to the 12 next level, and we would argue about it.</p> <p>13 Q Right. Who did you report to at that 14 time when you were the GM of Transmissions, 15 Clutches and drivelines?</p> <p>16 A Prakash Mulchandani.</p> <p>17 Q And he was the President with the Heavy 18 Vehicle Systems at that time?</p> <p>19 A I think that's what it was called at the 20 time.</p> <p>21 Q Was that position as the GM of 22 Transmissions, Clutches and Drivelines, when you</p>
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<p>1 General Manager of Transmission, Clutches and 2 Drivelines. And then when we formed a joint 3 venture in '99, became president of ZF Meritor.</p> <p>4 Q Let me ask you a little bit about your 5 position as the General Manager of Transmission, 6 Clutches and Drivelines.</p> <p>7 What did that entail? Were you involved 8 in the sales and marketing of those products, or 9 was it the operation, manufacturing and 10 operations?</p> <p>11 A The main -- your main -- your main 12 function was operations and engineering. We 13 have -- Rockwell/ArvinMeritor always had a 14 centralized sales and marketing group, and always 15 had a centralized purchasing-type group, 16 purchasing logistics, so your main 17 responsibilities were the operations side and the 18 engineering side, but you were expected to -- you 19 had the profitability control, so you were 20 expected to interface with the sales and marketing 21 and purchasing group.</p> <p>22 Q In terms of decision making at that</p>	<p>1 took that position I guess in '95 or so, was that 2 the first transmission/clutch responsibility you 3 had had with the company?</p> <p>4 A Yes.</p> <p>5 Q Tell me a little bit about -- I know 6 this is going way back in your memory, especially 7 since retirement probably forgotten some of this, 8 but tell me a little about it about the products, 9 the transmission products the company made at the 10 time. I know that the company had manual 11 transmissions in the mid '90s. Is that fair?</p> <p>12 A The basic product line, they started 13 with in 1989 was 9-speed manual, a 10-speed 14 manual, and a low-torque 13-speed manual.</p> <p>15 Q Okay. And had that changed by the time 16 you got there in '95 to the position as General 17 Manager of Transmissions, Clutches and Drivelines?</p> <p>18 A No, product line.</p> <p>19 Q When you say low-torque 13-speed, what's 20 a low-torque 13-speed?</p> <p>21 A Well, every product has various torque 22 ranges. We only had a 13-speed that worked --</p>

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<p style="text-align: right;">Page 14</p> <p>1 belonged in the lower torque ranges.</p> <p>2 Q What sort of truck applications was that</p> <p>3 most suited for, the low-torque 13-speed?</p> <p>4 A It worked in a class 8 truck, but in</p> <p>5 just certain applications.</p> <p>6 Q Give me an example. What sort of</p> <p>7 applications would a low-torque 13-speed be best</p> <p>8 suited for?</p> <p>9 A Off the top of my head, I can't think of</p> <p>10 one right now, but --</p> <p>11 Q Low torque, I take it that's, what, like</p> <p>12 1150 foot pounds or 1400 or so?</p> <p>13 A I think it was 1250 -- 1350, I think.</p> <p>14 But that's --</p> <p>15 Q Did the company have any high-torque 13</p> <p>16 speeds above 1450?</p> <p>17 A No.</p> <p>18 Q What about LL trucks? Did the company</p> <p>19 have any LL transmissions -- did the company have</p> <p>20 any LL transmissions when you got there?</p> <p>21 A No.</p> <p>22 Q 15-speeds, 18-speeds, 20-speeds?</p>	<p style="text-align: right;">Page 16</p> <p>1 ZF Meritor?</p> <p>2 A I think we had -- I'd be guessing. It</p> <p>3 was more than 10, less than 50, okay?</p> <p>4 Somewhere --</p> <p>5 Q Fair enough. And that -- was Dean Molde</p> <p>6 in charge of that engineering group?</p> <p>7 A Yes.</p> <p>8 Q And then you said you had a small</p> <p>9 marketing and service organization that interfaced</p> <p>10 with the Meritor sales and marketing team. And</p> <p>11 roughly how small was the marketing and service</p> <p>12 group at ZF Meritor?</p> <p>13 A Between five and ten people.</p> <p>14 Q And was Charlie Allen the head of that</p> <p>15 group?</p> <p>16 A Yes.</p> <p>17 Q And I take it the responsibility for --</p> <p>18 for selling and marketing the transmissions of</p> <p>19 ZF Meritor was really the ArvinMeritor sales and</p> <p>20 marketing force who was responsible for that. Is</p> <p>21 that fair?</p> <p>22 A That's correct.</p>
<p style="text-align: right;">Page 15</p> <p>1 A No.</p> <p>2 Q You said you became the President of the</p> <p>3 joint venture between Meritor and ZF/AG; is that</p> <p>4 correct?</p> <p>5 A That's correct.</p> <p>6 Q And what were your responsibilities as</p> <p>7 the President of the ZF Meritor joint venture?</p> <p>8 A I was responsible for the total</p> <p>9 operation. We had one plant, which was in</p> <p>10 Laurinburg, North Carolina, so I had the</p> <p>11 operations side. Again, as plant manager there,</p> <p>12 the human resources for the -- the financial</p> <p>13 controller.</p> <p>14 We had our own purchasing, project</p> <p>15 management and we had a small engineering group</p> <p>16 that interfaced with both Meritor and mainly ZF.</p> <p>17 And we had a small marketing and service</p> <p>18 group that interfaced with Meritor, sales and</p> <p>19 marketing and service group.</p> <p>20 Q Just so I'm clear, so you said you had a</p> <p>21 small engineering group. What do you mean by</p> <p>22 "small"? How small an engineering group was it at</p>	<p style="text-align: right;">Page 17</p> <p>1 Q And that's Mr. Kline's organization,</p> <p>2 Dennis Kline?</p> <p>3 A That's correct.</p> <p>4 Q Now, ZF Meritor, did ZF Meritor roll out</p> <p>5 a high-torque 13-speed transmission during your</p> <p>6 tenure there?</p> <p>7 A No.</p> <p>8 Q And what about an LL transmission?</p> <p>9 A We had -- at the end, we had an LML and</p> <p>10 a 10D or 10C -- I can't remember the exact</p> <p>11 terminology -- that we were bringing out towards</p> <p>12 the end of the joint venture, yes.</p> <p>13 Q When you say "towards the end of the</p> <p>14 joint venture," what do you mean?</p> <p>15 A Within the last year or so. It had been</p> <p>16 designed and tested, and I don't remember if we</p> <p>17 had sold any or many.</p> <p>18 Q Do you remember whether it was</p> <p>19 commercialized and sold at all?</p> <p>20 A No, I don't.</p> <p>21 Q What about a 15-speed or an 18-speed?</p> <p>22 Did ZF joint venture commercialize a 15-speed or</p>

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<p style="text-align: right;">Page 18</p> <p>1 18-speed transmission?</p> <p>2 A Not of our own, no.</p> <p>3 Q Did you commercialize somebody else's</p> <p>4 15-speed or 18-speed transmission?</p> <p>5 A We quoted 13- and 18-speeds in</p> <p>6 conjunction with TTC a couple times.</p> <p>7 Q Okay, but you didn't -- you didn't</p> <p>8 manufacture -- ZF Meritor didn't manufacture its</p> <p>9 own 13s, 15s and 18s?</p> <p>10 A That's correct.</p> <p>11 Q I want to go back to your job history</p> <p>12 for a second.</p> <p>13 So you were the President of the</p> <p>14 ZF Meritor joint venture when it was formed</p> <p>15 in '99, and then how long did you continue as the</p> <p>16 President of the joint venture?</p> <p>17 A Until approximately April of 2004, when</p> <p>18 it was disbanded.</p> <p>19 Q And where did you go from that position?</p> <p>20 A I stayed with Meritor until the end of</p> <p>21 the fiscal year and retired at the end of</p> <p>22 September 2004.</p>	<p style="text-align: right;">Page 20</p> <p>1 what the customers what, what the OEM customers</p> <p>2 want for certain truck applications; is that fair?</p> <p>3 MS. DUNCAN HACKETT: Objection.</p> <p>4 THE WITNESS: I think it was necessary</p> <p>5 for us to have a full line of product in the long</p> <p>6 term, yes.</p> <p>7 BY MR. OSTOYICH:</p> <p>8 Q And I saw some -- viewed some requests</p> <p>9 that you made for what was then the Rockwell or</p> <p>10 Meritor management to authorize you to spend money</p> <p>11 to build out or buy transmissions -- the assets</p> <p>12 that would allow you to have 13, 15 and 18</p> <p>13 multispeed transmissions; is that fair?</p> <p>14 A You'd have to rephrase that question a</p> <p>15 little bit.</p> <p>16 During the period it was Rockwell, you</p> <p>17 would have seen documents for us to purchase the</p> <p>18 Mack business, which would have given us other</p> <p>19 products.</p> <p>20 It would not have been until it was</p> <p>21 either Meritor or ZF Meritor that you would have</p> <p>22 seen appropriations for us to start spending money</p>
<p style="text-align: right;">Page 19</p> <p>1 Q Just so I'm clear, so the Meritor fiscal</p> <p>2 year ended in September 2004, and you retired</p> <p>3 after that?</p> <p>4 A I did.</p> <p>5 Q And have you stayed retired after that,</p> <p>6 or have you worked since then?</p> <p>7 A I'm retired ever since then.</p> <p>8 Q I want to go back to this -- the period</p> <p>9 we talked about earlier. You were the General</p> <p>10 Manager of the Transmission, Clutch and Driveline</p> <p>11 business for Rockwell, and then Meritor.</p> <p>12 I've seen a lot of documents in the</p> <p>13 company's files where you're advocating to</p> <p>14 management of the Meritor organization, and then</p> <p>15 the joint venture Board as well, commercial --</p> <p>16 designing and commercializing some of these other</p> <p>17 transmission products that you didn't have at the</p> <p>18 time alone: an LL, and a 13, 15 and 18.</p> <p>19 Is that a fair characterization?</p> <p>20 A Yes.</p> <p>21 Q And what generally -- it looks like you</p> <p>22 think those transmissions are necessary to meet</p>	<p style="text-align: right;">Page 21</p> <p>1 to develop something of our own.</p> <p>2 Q So just so we're clear on the record,</p> <p>3 prior to the joint venture when you were the</p> <p>4 General Manager of the Transmission, Clutch and</p> <p>5 Driveline business with Rockwell/Meritor, you</p> <p>6 looked at potentially purchasing the Mack</p> <p>7 transmission line?</p> <p>8 A That's correct.</p> <p>9 Q And that -- at that time, what did that</p> <p>10 include? Was that 13-, 15- and 18-speed</p> <p>11 transmissions?</p> <p>12 A I'm not -- it included everything that</p> <p>13 Mack made. Off the top of my head, I couldn't</p> <p>14 name all of them, but certainly 13s and 18s were</p> <p>15 part of it.</p> <p>16 Q Did you at that time, when you were the</p> <p>17 General Manager of the Transmission, Clutch and</p> <p>18 Driveline business with Rockwell and Meritor, did</p> <p>19 you consider expending your own internal resources</p> <p>20 to build -- design and build and manufacture and</p> <p>21 commercialize 13s, 15s and 18s?</p> <p>22 A We felt if we could do it another way</p>

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<p style="text-align: right;">Page 22</p> <p>1 than spend the resources to do it our self, we 2 would be better off. 3 Q Why is that? 4 A Because it took people resources, 5 capital resources, and time to do it. 6 Q I take it the company at the time made a 7 decision it didn't want to spend the people 8 resources, capital resources, and other resources 9 required to do that? 10 MS. DUNCAN HACKETT: Objection. 11 THE WITNESS: It was a new -- it was a 12 new business with products that it was trying to 13 bring to market and gain share with, and that was 14 the focus. We just felt we couldn't focus on too 15 many things at the same time. 16 BY MR. OSTOYICH: 17 Q Okay. And what about when you became 18 the President of the ZF Meritor joint venture, I 19 saw that you told the Board a number of times that 20 you thought the company should, somewhere or 21 another, figure out a way to offer 13s, 15s and 22 18s and LL transmissions. Is that fair?</p>	<p style="text-align: right;">Page 24</p> <p>1 We would consider any -- talked about 2 and considered all of the resources in any way, 3 shape or form. 4 Q Did the Board of ZF Meritor, while you 5 were there -- looks like they did not agree with 6 your proposal to ultimately develop LLs, 13s 7 and 18s? 8 A We -- they agreed with the necessity, 9 and one time approved funds to start developing 10 some of the products. 11 It wasn't a matter of they didn't agree 12 with it; it was a matter of timing. 13 Q What do you mean -- 14 A Timing and resources. 15 Q What do you mean it was a matter of 16 timing and resources? 17 A Again, we had a lot on our plate. We 18 had a lot to be doing. As soon as the -- as soon 19 as the joint venture started, our number one focus 20 was to bring out the FreedomLine, and that meant 21 12-speeds and 16-speeds, neither of which anybody 22 in the United States ever saw before. That meant</p>
<p style="text-align: right;">Page 23</p> <p>1 A To answer your exact question, no. 2 Q Okay. Go ahead. Tell me what I didn't 3 get right in my question. 4 A We had discussions on certainly 13s 5 and 18s in some form of a transmission that met 6 the L-type categories. 7 Q When you say you had discussions, what 8 do you mean you had discussions? Were they 9 discussions with the Board of Directors of 10 ZF Meritor? 11 A Yes. 12 Q And what discussions were you advocating 13 that the company -- that ZF Meritor joint venture 14 company that you were the president of, design -- 15 allocate resources to design, build, manufacture, 16 and ultimately commercialize LL, 13s and 18 17 transmissions? 18 A It was always considering various ways 19 of fulfilling the product line, whether it was 20 working with TTC or developing something our self, 21 or using what ZF had because ZF had tremendous 22 technology.</p>	<p style="text-align: right;">Page 25</p> <p>1 17-inch clutches, which nobody in the United 2 States used for a long time. 3 So it was a -- we had a lot on our plate 4 for the size of the organization, so you can only 5 do so much, and that's what we were doing. 6 Q So I take it a decision was made at the 7 Board level, and presumably you were involved in 8 it, to focus the company's resources on rolling 9 out the FreedomLine, the 12-speed and the 16-speed 10 and put on the back burner LLs, 13s, 15s, 18s, and 11 whatever else -- whatever other type of 12 transmission? 13 MS. DUNCAN HACKETT: Objection. 14 THE WITNESS: Decisions were made at the 15 Board that the company only had a certain amount 16 of resources and a certain amount of -- those 17 resources had to be used to the best of our 18 ability to use them, yes. 19 BY MR. OSTOYICH: 20 Q And so the focus was on the FreedomLine 21 12- and 16-speed rather than on developing some of 22 these other transmission products?</p>

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<p style="text-align: right;">Page 26</p> <p>1 A At the time, yes.</p> <p>2 Q Let me ask you a little bit more about</p> <p>3 your responsibilities as the President of the</p> <p>4 joint venture.</p> <p>5 So in terms of the pricing of the</p> <p>6 products you had -- and the joint venture, I guess</p> <p>7 at that time, still had 9- and 10-speed manuals,</p> <p>8 correct?</p> <p>9 A Correct.</p> <p>10 Q And then you had the FreedomLine, which</p> <p>11 was -- when the joint venture was formed, was</p> <p>12 going to be introduced to the U.S., North America,</p> <p>13 about a year after the formation of the joint</p> <p>14 venture; is that fair?</p> <p>15 A Correct.</p> <p>16 Q Who decided the pricing of the products?</p> <p>17 Was that your responsibility, or would that have</p> <p>18 been the ArvinMeritor sales and marketing?</p> <p>19 A The ultimate responsibility was within</p> <p>20 ZF Meritor.</p> <p>21 Q And where within? Was that your</p> <p>22 responsibility or somebody else's?</p>	<p style="text-align: right;">Page 28</p> <p>1 President of the joint venture?</p> <p>2 A Again, it was the field sales and</p> <p>3 service force that had the contact responsibility.</p> <p>4 If they needed assistance from myself or</p> <p>5 Charlie Allen or one of the service people, they</p> <p>6 would ask for it.</p> <p>7 Q But it was the North American field</p> <p>8 organization of ArvinMeritor that was directly</p> <p>9 responsible for dealing with the fleets?</p> <p>10 A That's correct.</p> <p>11 Q When you got into the position as</p> <p>12 General Manager of Transmissions, Clutches and</p> <p>13 Drivelines with Rockwell/Meritor, were the -- were</p> <p>14 the company's 9- and 10-speed manual</p> <p>15 transmissions, was that the F platform at that</p> <p>16 time?</p> <p>17 A I don't remember. I don't remember the</p> <p>18 terminology at that point in time.</p> <p>19 Q Fair enough. Did the company's</p> <p>20 transmissions, 9- and 10-speed manual</p> <p>21 transmissions when you got there, were there</p> <p>22 warranty problems with those products?</p>
<p style="text-align: right;">Page 27</p> <p>1 A Yes, it ended up with me, yes. It ended</p> <p>2 up with the Board, but it would be my</p> <p>3 recommendation to the Board as to what --</p> <p>4 Q And were you responsible for negotiating</p> <p>5 that with OEMs over those prices, or would that</p> <p>6 have been the Dennis Kline ArvinMeritor sales and</p> <p>7 marketing team?</p> <p>8 A Dennis Kline's team would be the main</p> <p>9 negotiator.</p> <p>10 Q When you say their main negotiator,</p> <p>11 ultimately whose responsibility was it to</p> <p>12 negotiate?</p> <p>13 A If -- if he needed Charlie Allen's</p> <p>14 involvement or my involvement or any involvement</p> <p>15 from ZF Meritor, we would be there to help him.</p> <p>16 Q But ultimately it was Mr. Kline's team's</p> <p>17 responsibility to negotiate with the OEMs to sell</p> <p>18 transmissions and clutches?</p> <p>19 A Yes.</p> <p>20 Q And what about with the fleets? Did you</p> <p>21 have any interaction with fleets or responsibility</p> <p>22 for interacting with fleets when you were the</p>	<p style="text-align: right;">Page 29</p> <p>1 MS. DUNCAN HACKETT: Objection.</p> <p>2 THE WITNESS: When I took over, we were</p> <p>3 finishing up a recall on a bearing.</p> <p>4 BY MR. OSTOYICH:</p> <p>5 Q Okay. What do you mean, when you were</p> <p>6 finishing up recall on a bearing? What do you</p> <p>7 mean by that?</p> <p>8 A We had a bearing -- one of the -- we</p> <p>9 had -- we had problems with a bearing, and we --</p> <p>10 ArvinMeritor recalled them. We had a field fix</p> <p>11 for them, so we fixed all the ones that were in</p> <p>12 the field. That's when I took over the business.</p> <p>13 Q Okay. Let me make sure I'm clear.</p> <p>14 A It started before I became President,</p> <p>15 and then finished after I became President.</p> <p>16 Q Fair enough. So was one of your</p> <p>17 responsibilities when you became General Manager</p> <p>18 of the Transmission, Clutch and Driveline business</p> <p>19 to finish up that recall of the bearings issue?</p> <p>20 A Yes, it would have been one of them.</p> <p>21 Q Tell me a little bit about it. You said</p> <p>22 recall on bearings. Bearings used in the</p>

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<p>1 company's 9- and 10-speed manual transmissions?</p> <p>2 A A particular bearing, yes.</p> <p>3 Q And what was the problem with the</p> <p>4 bearing?</p> <p>5 A It's been too long.</p> <p>6 Q Fair enough. But it was a problem, I</p> <p>7 guess, that was causing transmission problems in</p> <p>8 the field with fleets driving trucks with your</p> <p>9 transmissions?</p> <p>10 A Yes.</p> <p>11 Q And I take it it was systemic? It was</p> <p>12 across the board with all of the transmissions</p> <p>13 that had those bearings in them?</p> <p>14 A Yes.</p> <p>15 Q Was that 9- and 10-speed transmissions</p> <p>16 that had the recall, or --</p> <p>17 A I believe so.</p> <p>18 Q And was it all the company's</p> <p>19 transmissions, or was it a certain portion of the</p> <p>20 9- and 10-speed family?</p> <p>21 A All of them.</p> <p>22 Q You said -- you used the term "recall."</p>	<p>1 A It was more than a week, less than a</p> <p>2 year.</p> <p>3 Q I take it, Mr. Martello, that that</p> <p>4 recall of the Rockwell/Meritor 9- and 10-speed</p> <p>5 manual transmissions created difficulties with</p> <p>6 OEMs and fleets, made it harder to sell the</p> <p>7 product. Is that fair?</p> <p>8 MS. DUNCAN HACKETT: Objection.</p> <p>9 THE WITNESS: To my knowledge, we had no</p> <p>10 fleet or -- leave because of the problem.</p> <p>11 BY MR. OSTOYICH:</p> <p>12 Q Slightly different than my question. My</p> <p>13 question is did it create difficulties on an</p> <p>14 ongoing forward basis with trying to sell the</p> <p>15 products you had after you did the recall of all</p> <p>16 the 9- and 10-speed manual transmissions?</p> <p>17 A I would say no. It was not uncommon in</p> <p>18 the marketplace to have product fixes, product --</p> <p>19 whether -- any part of a truck.</p> <p>20 So I -- I mean, fleets -- it was not an</p> <p>21 unusual situation for the fleets.</p> <p>22 Q Let me make sure I get your testimony</p>
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<p>1 You said that the transmissions were recalled.</p> <p>2 What do you mean by recall?</p> <p>3 A There was a specific -- specific</p> <p>4 notification went out to all users, owners,</p> <p>5 fleets, that said we have this problem, we have a</p> <p>6 solution for it, you are to bring -- schedule with</p> <p>7 our field people to bring them in at your</p> <p>8 convenience, and we will fix them and pay for the</p> <p>9 fix.</p> <p>10 Q You said you were -- when you became the</p> <p>11 General Manager of that business, that you were</p> <p>12 finishing up that recall. What do you mean,</p> <p>13 "finishing up"? Obviously, it was in the works.</p> <p>14 A Well, it started before I -- it was</p> <p>15 announced before I took over and finished up after</p> <p>16 I took over.</p> <p>17 Q And so you took over in mid '95. How --</p> <p>18 how long after you took over did it take before</p> <p>19 the recall was finished?</p> <p>20 A I don't remember.</p> <p>21 Q Well, I'm trying to get a sense. Was it</p> <p>22 a week or was it six months or a year?</p>	<p>1 right.</p> <p>2 So it was not unusual to have recalls of</p> <p>3 transmissions that were out in trucks that had</p> <p>4 been operating on the highways?</p> <p>5 MS. DUNCAN HACKETT: Objection.</p> <p>6 THE WITNESS: I didn't say that.</p> <p>7 I said it was not unusual for the fleets</p> <p>8 to have field problems and fixes to field</p> <p>9 problems. Whether you call it a recall, or</p> <p>10 however you do it -- "fixes fail" is another term</p> <p>11 that was used in the market, but notification of</p> <p>12 fleets by suppliers in the market was not totally</p> <p>13 unusual.</p> <p>14 BY MR. OSTOYICH:</p> <p>15 Q Fixes the -- you used the term "fixes</p> <p>16 fail." Is that synonymous with recall?</p> <p>17 A I would say no.</p> <p>18 Q Okay. What did you mean by fixes fail,</p> <p>19 then?</p> <p>20 A A recall to me would mean you told</p> <p>21 somebody to fix it before it failed or that you</p> <p>22 felt it was going to fail, and you told them to</p>

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<p style="text-align: right;">Page 34</p> <p>1 fix it. Fixes fail would mean we have this</p> <p>2 problem, here's the fix, but you'll have to do it</p> <p>3 until it fails.</p> <p>4 Q Give me an example of a major fleet</p> <p>5 customer that the company had for its transmission</p> <p>6 products then.</p> <p>7 Was Ryder one of the big customers,</p> <p>8 fleet customers?</p> <p>9 A Yes.</p> <p>10 Q Ryder -- what sort of fleet are they?</p> <p>11 Are they a leasing company or are they --</p> <p>12 A Mainly a leasing company.</p> <p>13 Q And was that one of the company's major</p> <p>14 transmission customers at that time?</p> <p>15 A Yes.</p> <p>16 Q Can you give me an idea of the order of</p> <p>17 magnitude. Are we talking thousands of</p> <p>18 transmissions that Ryder was -- Ryder trucks had</p> <p>19 Meritor transmissions?</p> <p>20 A Eventually, yes.</p> <p>21 Q And am I right, Mr. Martello, that they</p> <p>22 were -- Ryder was roughly 30, 40 percent of the</p>	<p style="text-align: right;">Page 36</p> <p>1 at some point after their recall?</p> <p>2 MS. DUNCAN HACKETT: Objection.</p> <p>3 THE WITNESS: To the best of my</p> <p>4 recollection, we always had some amount of Ryder</p> <p>5 business.</p> <p>6 BY MR. OSTOYICH:</p> <p>7 Q Did your Ryder business decrease</p> <p>8 substantially after the recall?</p> <p>9 A After the recall? Right after the</p> <p>10 recall? No.</p> <p>11 Q At any time after the recall.</p> <p>12 A I don't believe the recall had anything</p> <p>13 to do with the loss of business.</p> <p>14 Q But the company did lose a substantial</p> <p>15 amount of Ryder business after recall of all of</p> <p>16 its 9- and 10-speed manual transmissions; is that</p> <p>17 fair?</p> <p>18 MS. DUNCAN HACKETT: Objection.</p> <p>19 THE WITNESS: It lost some of the</p> <p>20 business after 1996, yes.</p> <p>21 BY MR. OSTOYICH:</p> <p>22 Q You lost a substantial amount of the</p>
<p style="text-align: right;">Page 35</p> <p>1 company's transmission business at the time?</p> <p>2 A I don't remember. It was a large</p> <p>3 portion, but I don't remember the percentage. I'd</p> <p>4 have to look it up.</p> <p>5 Q Fair enough. But a large portion, Ryder</p> <p>6 by itself was 20, 30 percent of the company's</p> <p>7 transmission business?</p> <p>8 MS. DUNCAN HACKETT: Objection.</p> <p>9 THE WITNESS: I don't want to give a</p> <p>10 percentage.</p> <p>11 BY MR. OSTOYICH:</p> <p>12 Q Were they the number one customer?</p> <p>13 A At a point in time, yes.</p> <p>14 Q Did Ryder have to return trucks to fix</p> <p>15 the 9- and 10-speed manual transmissions with the</p> <p>16 bearing problems as part of the recall?</p> <p>17 A Yes, they would have.</p> <p>18 Q And did it have to return thousands of</p> <p>19 trucks to fix those bearing problems?</p> <p>20 A I don't believe they had thousands at</p> <p>21 that time.</p> <p>22 Q And did the company lose Ryder business</p>	<p style="text-align: right;">Page 37</p> <p>1 Ryder business, right?</p> <p>2 MS. DUNCAN HACKETT: Objection.</p> <p>3 MR. HOLCOMB: Objection.</p> <p>4 THE WITNESS: To the best of my</p> <p>5 knowledge, yes. Ryder was a contract that was</p> <p>6 quoted every few years.</p> <p>7 BY MR. OSTOYICH:</p> <p>8 Q When the next contract came up, you got</p> <p>9 much less of their business?</p> <p>10 A I don't remember which -- at which point</p> <p>11 in time that we lost some of the business. I</p> <p>12 don't remember.</p> <p>13 Q '98, 99 time frame?</p> <p>14 A I don't remember.</p> <p>15 Q But you do recall that sometime after</p> <p>16 the recall, you lost a lot of the Ryder business?</p> <p>17 MS. DUNCAN HACKETT: Objection.</p> <p>18 THE WITNESS: Probably after 1996, yes.</p> <p>19 BY MR. OSTOYICH:</p> <p>20 Q Have you done any -- we can go back to</p> <p>21 your job history.</p> <p>22 Have you done any consulting work at all</p>

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<p style="text-align: right;">Page 38</p> <p>1 with ArvinMeritor or any Meritor organization</p> <p>2 since you retired in September of '04?</p> <p>3 A The only -- the only work I have done</p> <p>4 with ArvinMeritor since I retired is give</p> <p>5 depositions in different cases.</p> <p>6 Q But you're not -- you're not doing any</p> <p>7 consulting on an ongoing basis since your</p> <p>8 retirement?</p> <p>9 A No.</p> <p>10 Q You made a clean break in September '04?</p> <p>11 A (No audible response.)</p> <p>12 Q You said you've given depositions in</p> <p>13 cases. What sort of cases?</p> <p>14 A Patent infringement cases.</p> <p>15 Q The complaint -- you left the joint</p> <p>16 venture -- you retired from the company in</p> <p>17 September of '04.</p> <p>18 The complaint in this case was filed in</p> <p>19 October of 2006, after you left the company.</p> <p>20 Were you involved at all in authorizing</p> <p>21 the complaint in this case?</p> <p>22 A No.</p>	<p style="text-align: right;">Page 40</p> <p>1 A I don't remember. A year and a half,</p> <p>2 maybe two years ago.</p> <p>3 Q So sometime after it was filed, though,</p> <p>4 you saw something that had already been submitted</p> <p>5 to the court?</p> <p>6 A I saw something that hadn't been filed.</p> <p>7 Q Did you in the -- were you at all</p> <p>8 consulted or did you provide any input that was in</p> <p>9 the complaint that you saw?</p> <p>10 MS. DUNCAN HACKETT: Objection.</p> <p>11 THE WITNESS: Again, I don't know</p> <p>12 whether I was consulted or talked to before or</p> <p>13 after the complaint was drafted.</p> <p>14 BY MR. OSTOYICH:</p> <p>15 Q You just don't remember one way or</p> <p>16 another; is that right?</p> <p>17 A No.</p> <p>18 Q Now, when you were the President of the</p> <p>19 joint venture, did you authorize the filing of any</p> <p>20 kind of a complaint?</p> <p>21 A No.</p> <p>22 Q Were you consulted about that?</p>
<p style="text-align: right;">Page 39</p> <p>1 Q Were you involved in any decision on</p> <p>2 whether to file a complaint in this case?</p> <p>3 A No.</p> <p>4 Q Were you involved in drafting the</p> <p>5 complaint in this case?</p> <p>6 A No.</p> <p>7 Q Were you interviewed as part of the</p> <p>8 drafting of the complaint in this case?</p> <p>9 MS. DUNCAN HACKETT: Objection.</p> <p>10 THE WITNESS: I honestly don't know.</p> <p>11 BY MR. OSTOYICH:</p> <p>12 Q Were you consulted at all about whether</p> <p>13 the company should file this lawsuit?</p> <p>14 A No.</p> <p>15 Q Did you see a draft of the complaint</p> <p>16 before it was filed in the case?</p> <p>17 A No.</p> <p>18 Q Have you seen a draft of the complaint</p> <p>19 since it was filed?</p> <p>20 A I've seen the complaint.</p> <p>21 Q And tell me about that. When is the</p> <p>22 first time you saw the complaint in the case?</p>	<p style="text-align: right;">Page 41</p> <p>1 A No.</p> <p>2 Q Were you asked by lawyers, back when you</p> <p>3 were the President of the joint venture, to</p> <p>4 preserve documents that might be relevant to any</p> <p>5 lawsuit?</p> <p>6 A Any lawsuit?</p> <p>7 Q Any --</p> <p>8 A While I was President, there was a --</p> <p>9 actually two lawsuits and an FTC investigation</p> <p>10 going on, yes.</p> <p>11 Q Patent lawsuits?</p> <p>12 A Patent lawsuits, all of them.</p> <p>13 Q What about asked to preserve documents</p> <p>14 related to antitrust lawsuit?</p> <p>15 A No.</p> <p>16 MS. DUNCAN HACKETT: Objection.</p> <p>17 BY MR. OSTOYICH:</p> <p>18 Q Were you involved, Mr. Martello, as</p> <p>19 President of the -- of the joint venture, in any</p> <p>20 letters that ArvinMeritor sent to Eaton claiming</p> <p>21 that its conduct violated the antitrust laws?</p> <p>22 A No.</p>

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<p>1 Q Were you consulted at all about any</p> <p>2 letters about whether the company violated the</p> <p>3 antitrust laws?</p> <p>4 A No.</p> <p>5 Q Have you had any ongoing involvement --</p> <p>6 any involvement at all since your retirement with</p> <p>7 the lawsuit, this lawsuit?</p> <p>8 MS. DUNCAN HACKETT: Objection.</p> <p>9 THE WITNESS: Discussions with my</p> <p>10 lawyer -- with the lawyer.</p> <p>11 BY MR. OSTOYICH:</p> <p>12 Q And I'm not going to ask you the</p> <p>13 substance of what you talked about, but you said</p> <p>14 discussions with your lawyer.</p> <p>15 Have you had discussions prior to today</p> <p>16 about the lawsuit?</p> <p>17 A Yes.</p> <p>18 Q And was that in preparation for the</p> <p>19 deposition today, or for other purposes?</p> <p>20 A We had discussions yesterday, yes.</p> <p>21 Q Other than discussions yesterday with</p> <p>22 your lawyer, have you had any other involvement in</p>	<p>1 A No.</p> <p>2 Q Have you had any discussions with any</p> <p>3 ArvinMeritor or former ArvinMeritor employees</p> <p>4 about the lawsuit?</p> <p>5 A No, not really about the lawsuit, no.</p> <p>6 I have a very good friend that lives</p> <p>7 close to me that worked for ArvinMeritor, and we</p> <p>8 discussed that one was going on, but that's the</p> <p>9 extent of it because he's not involved and never</p> <p>10 was.</p> <p>11 Q Who -- who was that person?</p> <p>12 A A gentleman named Craig Pryor.</p> <p>13 Q Was he in the transmission business at</p> <p>14 all?</p> <p>15 A A long time ago.</p> <p>16 Q When you received a copy of the</p> <p>17 complaint via e-mail in this case, was it</p> <p>18 surprising to you or had you been expecting a</p> <p>19 lawsuit was going to be filed?</p> <p>20 MS. DUNCAN HACKETT: Objection.</p> <p>21 THE WITNESS: I can't say I was</p> <p>22 surprised, can't say I wasn't. I mean, I didn't</p>
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<p>1 the lawsuit since your retirement?</p> <p>2 A Yes.</p> <p>3 Q And what kind of involvement?</p> <p>4 A We had discussions, and that's the time</p> <p>5 frame that I told you I can't remember. It was</p> <p>6 maybe a year and a half, two years ago. I don't</p> <p>7 remember whether it was before or after the</p> <p>8 complaint was filed.</p> <p>9 Q Fair enough. How did you -- how did you</p> <p>10 get a copy of the complaint?</p> <p>11 A From the lawyers.</p> <p>12 Q Did they mail it to you, or were you in</p> <p>13 a face-to-face meeting?</p> <p>14 A E-mailed.</p> <p>15 Q E-mailed? And did they e-mail you</p> <p>16 drafts ahead of time?</p> <p>17 MS. DUNCAN HACKETT: Objection.</p> <p>18 THE WITNESS: No.</p> <p>19 BY MR. OSTOYICH:</p> <p>20 Q Other than a meeting yesterday, did you</p> <p>21 do anything else to prepare for today's</p> <p>22 deposition?</p>	<p>1 know if one -- I didn't know anything about it.</p> <p>2 The surprise was, if I had any surprise,</p> <p>3 it was that I didn't know anything about it.</p> <p>4 BY MR. OSTOYICH:</p> <p>5 Q What do you mean you didn't know</p> <p>6 anything about it?</p> <p>7 A Well, I had no knowledge of it until it</p> <p>8 was --</p> <p>9 Q Okay. Yeah, that's what I'm trying to</p> <p>10 get a sense -- you say you don't remember whether</p> <p>11 you were consulted ahead of time or after the</p> <p>12 fact. I'm trying to get a sense if you had a</p> <p>13 bunch of meetings, and then they said we're</p> <p>14 thinking about drafting a complaint, can we</p> <p>15 interview you and get information from you, and</p> <p>16 then you got it in the e-mail, the actual</p> <p>17 complaint that had been drafted; or whether it</p> <p>18 came out of the blue, in a sense?</p> <p>19 MS. DUNCAN HACKETT: Objection.</p> <p>20 THE WITNESS: I know -- all I know is</p> <p>21 that there was -- when I did have discussions,</p> <p>22 there was no writing of a draft and looking at a</p>

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<p style="text-align: right;">Page 46</p> <p>1 draft or doing anything that would be considered a</p> <p>2 draft.</p> <p>3 BY MR. OSTOYICH:</p> <p>4 Q And I take it you weren't aware that</p> <p>5 this was for purposes of a lawsuit, in other</p> <p>6 words?</p> <p>7 A Oh, yes, I was aware of what the purpose</p> <p>8 was, I remember that. But I didn't -- it</p> <p>9 wasn't -- like I say, I don't remember if it was</p> <p>10 at a period of time when there was consideration,</p> <p>11 or a period of time just after it was filed. I</p> <p>12 don't remember what that time frame was.</p> <p>13 Q Fair enough.</p> <p>14 A And it was strictly a one-day type of</p> <p>15 meeting. It wasn't a week-long meeting of any</p> <p>16 kind.</p> <p>17 Q I'll ask you a little bit about the</p> <p>18 joint venture.</p> <p>19 I understand that the joint venture was</p> <p>20 a separate company which was -- in a sense, it was</p> <p>21 a subsidiary of ArvinMeritor and ZF/AG, the German</p> <p>22 company; is that right?</p>	<p style="text-align: right;">Page 48</p> <p>1 just through the shareholdings?</p> <p>2 A I don't understand the question.</p> <p>3 Q I understand they were a shareholder,</p> <p>4 right?</p> <p>5 A Uh-huh.</p> <p>6 Q Were Meritor employees -- were your</p> <p>7 employees at ZF Meritor, were they employed by</p> <p>8 your organization, ZF Meritor, or were they still</p> <p>9 ArvinMeritor employees?</p> <p>10 A No. They were ZF Meritor employees.</p> <p>11 Q So a complete, separate company, in</p> <p>12 other words, the business had been divested into</p> <p>13 the joint venture?</p> <p>14 A Yes.</p> <p>15 Q Mr. Martello, have you -- do you have</p> <p>16 any agreements to appear at trial for the</p> <p>17 plaintiffs in this case?</p> <p>18 MS. DUNCAN HACKETT: Objection.</p> <p>19 THE WITNESS: I have no signed documents</p> <p>20 of any kind with plaintiffs, no.</p> <p>21 BY MR. OSTOYICH:</p> <p>22 Q Okay. And have you agreed orally or</p>
<p style="text-align: right;">Page 47</p> <p>1 A It was an LLC, yes.</p> <p>2 Q And it was owned by the two parent</p> <p>3 companies, ArvinMeritor owned 50 percent of its</p> <p>4 shares, and ZF/AG owned 50 percent of the shares,</p> <p>5 is that fair?</p> <p>6 A 50 percent of ArvinMeritor's was owned</p> <p>7 by a company called Heavy-Duty Transmission</p> <p>8 business, I think.</p> <p>9 Q Okay. So the direct owner of the shares</p> <p>10 of ZF Meritor was Heavy-Duty Transmission</p> <p>11 business?</p> <p>12 A Something of that nature, yes.</p> <p>13 Q And then that company was owned by</p> <p>14 ArvinMeritor?</p> <p>15 A Correct.</p> <p>16 Q And then I take it ZF/AG owned the other</p> <p>17 50 percent?</p> <p>18 A To the best of my knowledge. I don't</p> <p>19 know if there was a subcompany to that.</p> <p>20 Q Did either of the parent companies --</p> <p>21 did Meritor, ArvinMeritor or any Meritor</p> <p>22 organization, directly own ZF Meritor, or was it</p>	<p style="text-align: right;">Page 49</p> <p>1 otherwise to appear at trial for the plaintiffs in</p> <p>2 the case?</p> <p>3 MS. DUNCAN HACKETT: Objection.</p> <p>4 THE WITNESS: I have not been asked.</p> <p>5 BY MR. OSTOYICH:</p> <p>6 Q And do you have any plans to appear at</p> <p>7 trial?</p> <p>8 A Excuse me?</p> <p>9 Q Do you have any plans to appear at trial</p> <p>10 of this case?</p> <p>11 A I have not been asked.</p> <p>12 Q But does that mean you don't have any</p> <p>13 plans?</p> <p>14 MS. DUNCAN HACKETT: Objection.</p> <p>15 THE WITNESS: Yeah, at this time, I have</p> <p>16 no plans. I haven't been asked.</p> <p>17 BY MR. OSTOYICH:</p> <p>18 Q Are you being compensated for your time</p> <p>19 today?</p> <p>20 A Yes, hopefully.</p> <p>21 Q I'm sorry. What did you say,</p> <p>22 "hopefully"?</p>

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<p>1 A Hopefully, yes.</p> <p>2 Q All right. I take it it's not a done</p> <p>3 deal?</p> <p>4 A Yeah, time and expenses, yes.</p> <p>5 Q And what are time and expenses?</p> <p>6 A Excuse me?</p> <p>7 Q How much is time and expenses?</p> <p>8 A My former contract with ArvinMeritor was</p> <p>9 \$125 an hour for time, plus extra expenses, but</p> <p>10 that contract is actually over, so hopefully</p> <p>11 they'll honor it.</p> <p>12 Q What -- I didn't realize you had a</p> <p>13 contract. So what was the contract you had for</p> <p>14 \$125 an hour with Meritor?</p> <p>15 A When I left the company, they -- I</p> <p>16 signed a contract to help them if they needed</p> <p>17 help. The contract was a year -- a two-year</p> <p>18 contract -- consulting agreement, contract,</p> <p>19 whatever you want to call it.</p> <p>20 Q Okay. So let me go back then because I</p> <p>21 thought you said you didn't have any -- after you</p> <p>22 retired, you made a clean break.</p>	<p>1 company's transmissions, when you were the General</p> <p>2 Manager of the Transmission, Clutch and Driveline</p> <p>3 business for Rockwell/Meritor, that the company's</p> <p>4 transmissions had been plagued with warranty</p> <p>5 problems?</p> <p>6 MS. DUNCAN HACKETT: Objection.</p> <p>7 THE WITNESS: They had no more warranty</p> <p>8 problems than anybody else in the industry or any</p> <p>9 other products in the industry.</p> <p>10 BY MR. OSTOYICH:</p> <p>11 Q Would you agree with me that they've</p> <p>12 been plagued with warranty problems?</p> <p>13 MS. DUNCAN HACKETT: Objection.</p> <p>14 THE WITNESS: You'd have to define what</p> <p>15 you mean by "plagued."</p> <p>16 BY MR. OSTOYICH:</p> <p>17 Q What did you mean by "plagued"? What</p> <p>18 does plagued typically mean to you?</p> <p>19 A What does it mean to me. An ongoing</p> <p>20 problem.</p> <p>21 Q Of severity, right?</p> <p>22 A Not necessarily severity.</p>
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<p>1 A I did not do anything -- I have not done</p> <p>2 anything with them other than the depositions for</p> <p>3 other lawsuits.</p> <p>4 Q So other than your time -- did you</p> <p>5 charge \$125 an hour for your time in the other</p> <p>6 lawsuits?</p> <p>7 A Yes.</p> <p>8 Q Okay. Other than that time, have you</p> <p>9 done any consulting work with the company?</p> <p>10 A No.</p> <p>11 Q Why did you -- why did you leave the</p> <p>12 joint venture in April of '04?</p> <p>13 A I had 31, almost 31 years with the</p> <p>14 company, and the formula at which our retirement</p> <p>15 is based made it advantageous for me to retire at</p> <p>16 that time.</p> <p>17 Q Was your retirement voluntary, sir?</p> <p>18 A Yes.</p> <p>19 Q Mr. Martello, I asked you a little bit</p> <p>20 about the bearings recall issue in the 9- and</p> <p>21 10-speed manual transmissions.</p> <p>22 Would you agree with me that the</p>	<p>1 Q Would you agree with me, then, that the</p> <p>2 company's transmissions had been plagued with</p> <p>3 ongoing warranty problems?</p> <p>4 MR. HOLCOMB: Objection.</p> <p>5 MS. DUNCAN HACKETT: Objection.</p> <p>6 THE WITNESS: I would agree that the</p> <p>7 transmissions had no more warranty problems than</p> <p>8 anybody else in the industry.</p> <p>9 BY MR. OSTOYICH:</p> <p>10 Q Slightly different question, so I'd like</p> <p>11 you to answer the one I'm asking.</p> <p>12 Would you agree with me that the</p> <p>13 company's transmissions, manual transmissions,</p> <p>14 were plagued with warranty problems?</p> <p>15 MR. HOLCOMB: Objection.</p> <p>16 THE WITNESS: Not continually.</p> <p>17 BY MR. OSTOYICH:</p> <p>18 Q But at points they were plagued with</p> <p>19 warranty problems?</p> <p>20 A At points they had warranty problems,</p> <p>21 yes.</p> <p>22 Q Plagued with them, correct?</p>

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<p>1 MS. DUNCAN HACKETT: Objection.</p> <p>2 MR. HOLCOMB: Objection.</p> <p>3 You don't have to answer any more.</p> <p>4 MR. OSTOYICH: Yes, you do. He has to</p> <p>5 answer every question I ask him unless it calls</p> <p>6 for privilege.</p> <p>7 MR. HOLCOMB: You don't have to answer</p> <p>8 the same question over and over.</p> <p>9 MR. OSTOYICH: If you want to instruct</p> <p>10 him not to answer, you can instruct him not to</p> <p>11 answer.</p> <p>12 MR. HOLCOMB: I'm telling you he doesn't</p> <p>13 have to answer the same question over and over</p> <p>14 again.</p> <p>15 MR. OSTOYICH: He's not answering the</p> <p>16 question I've asked:</p> <p>17 The company's transmissions were at</p> <p>18 times plagued with warranty problems.</p> <p>19 MR. HOLCOMB: You're arguing with him.</p> <p>20 You've asked the question five times. He's</p> <p>21 already said he's not going to answer that</p> <p>22 question.</p>	<p>1 THE WITNESS: We had product problems,</p> <p>2 yes.</p> <p>3 BY MR. OSTOYICH:</p> <p>4 Q And at times you had substantial</p> <p>5 warranty problems that you brought to the</p> <p>6 attention of the Board of Directors of the joint</p> <p>7 venture, right?</p> <p>8 MS. DUNCAN HACKETT: Objection.</p> <p>9 THE WITNESS: The G platform was an</p> <p>10 attempt to change the shift mechanism to a single</p> <p>11 rail, and we had problems introducing the</p> <p>12 single-rail shift system, just as Eaton did when</p> <p>13 they introduced the Lightning, which was a single</p> <p>14 rail that they finally took off the market.</p> <p>15 BY MR. OSTOYICH:</p> <p>16 Q Mr. Martello, when you were the</p> <p>17 President of the joint venture, the ZF Meritor</p> <p>18 joint venture, you made quarterly reports to the</p> <p>19 Board of Directors, right?</p> <p>20 A That's correct.</p> <p>21 Q And at many of those Board of Directors</p> <p>22 meetings, the subject of the G platform warranty</p>
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<p>1 MR. OSTOYICH: Who is defending the</p> <p>2 deposition --</p> <p>3 MR. HOLCOMB: I am right now. He's not</p> <p>4 going to answer the --</p> <p>5 I instruct you not to answer the</p> <p>6 question.</p> <p>7 Move on. Make a motion if you don't</p> <p>8 like it.</p> <p>9 BY MR. OSTOYICH:</p> <p>10 Q Fine. Mr. Martello, are you going to</p> <p>11 follow his instruction or are you going to answer</p> <p>12 my question?</p> <p>13 A Yes, he is my attorney, and I will</p> <p>14 follow his instructions.</p> <p>15 Q Okay. Now, when you were the President</p> <p>16 of the joint venture, ZF Meritor joint venture,</p> <p>17 you came out with a G platform family of manuals,</p> <p>18 9- and 10-speed manuals, correct?</p> <p>19 A That's correct.</p> <p>20 Q And those manual transmissions had</p> <p>21 warranty problems, right?</p> <p>22 MS. DUNCAN HACKETT: Objection.</p>	<p>1 problems was discussed with the Board of Directors</p> <p>2 of the joint venture, right?</p> <p>3 A We discussed warranty at every Board</p> <p>4 meeting.</p> <p>5 Q And similarly, when the company, the</p> <p>6 joint venture, introduced the FreedomLine</p> <p>7 automated mechanical transmission into the market,</p> <p>8 you reported quarterly to the Board of Directors</p> <p>9 on the warranty problems the FreedomLine was</p> <p>10 having in the field, right?</p> <p>11 A I would characterize the FreedomLine as</p> <p>12 more the launch of a new product than I would an</p> <p>13 ongoing warranty problem.</p> <p>14 Q You did in fact participate in multiple</p> <p>15 Board of Directors meetings where FreedomLine with</p> <p>16 warranty problems were raised with the Board of</p> <p>17 Directors, right?</p> <p>18 MS. DUNCAN HACKETT: Objection.</p> <p>19 THE WITNESS: I participated in a lot of</p> <p>20 the meetings where we talked about the FreedomLine</p> <p>21 launch and what needed to be done to get the</p> <p>22 product to where we wanted it in the marketplace.</p>

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<p style="text-align: right;">Page 58</p> <p>1 We used failure rates as a method of --</p> <p>2 failure rate per hundred as a method of describing</p> <p>3 the problems that existed during the launch</p> <p>4 period, yes.</p> <p>5 BY MR. OSTOYICH:</p> <p>6 Q What do you mean, "failure rate per</p> <p>7 hundred"?</p> <p>8 A That's just -- the rate per hundred is</p> <p>9 the way we calculated it.</p> <p>10 Q And what were the rate of failures per</p> <p>11 hundred FreedomLine units in the field?</p> <p>12 A I don't know. I mean, that's -- I've</p> <p>13 seen so many warranty and failure rate charges</p> <p>14 that I couldn't tell you what the numbers were.</p> <p>15 Q Fair enough.</p> <p>16 Why don't we take a short break.</p> <p>17 THE VIDEOGRAPHER: Going off the record.</p> <p>18 The time is 9:58 a.m.</p> <p>19 (A break was taken.)</p> <p>20 THE VIDEOGRAPHER: Back on record. The</p> <p>21 time is 10:06 a.m.</p> <p>22</p>	<p style="text-align: right;">Page 60</p> <p>1 Q On the front page, Mr. Martello -- this</p> <p>2 is an internal Rockwell letter, it says up in the</p> <p>3 upper right-hand corner.</p> <p>4 A Correct.</p> <p>5 Q And this is an internal letter and</p> <p>6 attachment on a white paper with Mack Alliance</p> <p>7 that you wrote and sent to a list of people on the</p> <p>8 distribution on the front page--</p> <p>9 A Correct.</p> <p>10 Q -- on April 24th, 1997, right?</p> <p>11 A Correct.</p> <p>12 Q Okay. You prepared this and sent it in</p> <p>13 the ordinary course of your responsibilities as</p> <p>14 the -- at that time, as General Manager of the</p> <p>15 Rockwell Transmission, Clutch and Driveline</p> <p>16 business, right?</p> <p>17 A Correct.</p> <p>18 Q This is a white paper that you wrote, I</p> <p>19 take it, after you lost this potential Mack</p> <p>20 Alliance on transmissions that you mentioned</p> <p>21 earlier this morning. Is that fair?</p> <p>22 A Yes.</p>
<p style="text-align: right;">Page 59</p> <p>1 BY MR. OSTOYICH:</p> <p>2 Q All right, Mr. Martello, I'm going to</p> <p>3 mark as the first exhibit to your deposition a</p> <p>4 document that your lawyers produced from the</p> <p>5 company's files.</p> <p>6 It's an internal Rockwell letter from</p> <p>7 R. Martello, Transmission, Clutch and Driveline</p> <p>8 business, April 1997, related to a white paper you</p> <p>9 wrote on the Mack Alliance.</p> <p>10 There's a stamp down at the bottom</p> <p>11 indicating it came from the company's files,</p> <p>12 ZFMA0369760 to 68, and I'm going to ask you to</p> <p>13 take a look at that.</p> <p>14 (Martello Exhibit No. 1 was marked for</p> <p>15 identification.)</p> <p>16 BY MR. OSTOYICH:</p> <p>17 Q I only got one copy. I didn't know I</p> <p>18 was going to get double-teamed here.</p> <p>19 Just let me know when you've had a</p> <p>20 chance to look at that.</p> <p>21 A I've glanced through it, yes. I do</p> <p>22 remember this.</p>	<p style="text-align: right;">Page 61</p> <p>1 Q Okay. So this -- you were looking at</p> <p>2 potentially purchasing the Mack transmission</p> <p>3 business, which included some of the multispeeds</p> <p>4 that the Rockwell company didn't have at the time,</p> <p>5 and this reflects that they -- they decided not to</p> <p>6 sell their business, and then you wrote this white</p> <p>7 paper in response to that, I take it?</p> <p>8 A Yes.</p> <p>9 Q You mention on the first page of your</p> <p>10 white paper -- what -- what's a white paper, by</p> <p>11 the way?</p> <p>12 A A white paper just was a explanation of</p> <p>13 what happened.</p> <p>14 Q So it just signifies that this is</p> <p>15 something that you're documenting for the people</p> <p>16 on the cover page, I take it, of what happened</p> <p>17 during the negotiations, what you think</p> <p>18 recommendations should come out of that?</p> <p>19 A Yes, because this was -- it was</p> <p>20 something that had been proved all the way up to</p> <p>21 the Board of Directors of Rockwell.</p> <p>22 Q On the -- on the one, two, third --</p>

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<p style="text-align: right;">Page 62</p> <p>1 fourth page in, then, you have a section there</p> <p>2 that says "Financial Impact."</p> <p>3 A Uh-huh.</p> <p>4 Q Do you see that? And it says -- right</p> <p>5 above that it says, "in the final analysis," you</p> <p>6 wrote, "I believe our lack of a full product line</p> <p>7 coverage, plus our lack of market leadership</p> <p>8 versus Eaton, were the main factors which led to</p> <p>9 Mack's final decision. It certainly reduced the</p> <p>10 risks involved and made financial sense once the</p> <p>11 decision not to sell the business was made."</p> <p>12 Do you see that?</p> <p>13 A One, two, three, four. Okay.</p> <p>14 Q It's the paragraph right above</p> <p>15 "Financial Impact." Do you see where I am?</p> <p>16 A Right above Financial Impact. I guess I</p> <p>17 was considering that the third page, so I'm sorry.</p> <p>18 I guess it's the fourth page of the</p> <p>19 document, the third page--</p> <p>20 Q Third page of the white paper itself.</p> <p>21 A Okay.</p> <p>22 Q Do you see where I am?</p>	<p style="text-align: right;">Page 64</p> <p>1 Therefore, because we could not, one for</p> <p>2 one, replace the Eaton products in the</p> <p>3 marketplace, they were afraid of the retaliation</p> <p>4 from Eaton.</p> <p>5 Q Tell me a little bit about that. So you</p> <p>6 wrote this number three up here?</p> <p>7 A Yes, I read that also -- wrote that</p> <p>8 also.</p> <p>9 Q I take it you weren't privy to</p> <p>10 discussions between Eaton and Mack; is that fair?</p> <p>11 A I was never in a meeting between Eaton</p> <p>12 and Mack.</p> <p>13 Q So you have no firsthand knowledge of</p> <p>14 any Eaton discussion with Mack about the pricing</p> <p>15 of its products?</p> <p>16 A I was told this specifically by the head</p> <p>17 of purchasing of Mack.</p> <p>18 Q Who was that person?</p> <p>19 A Who was that person? Hans Walter.</p> <p>20 Q So my prior question, just so I'm clear</p> <p>21 on the record, you firsthand were not privy to any</p> <p>22 discussion between anyone at Eaton and anyone at</p>
<p style="text-align: right;">Page 63</p> <p>1 A Yes. That says -- the meaning of that</p> <p>2 is that they were not willing to bear the brunt of</p> <p>3 what Eaton had told them would happen if they sold</p> <p>4 the business, that they wouldn't -- they had been</p> <p>5 told that they would evoke the patent agreement</p> <p>6 against them and that they would take action</p> <p>7 against the pricing of the products that they sold</p> <p>8 Mack if they were to sell this business, and they</p> <p>9 did not want Mack to do that. That's what that</p> <p>10 statement says.</p> <p>11 Q Okay. I'm reading the paragraph,</p> <p>12 Mr. Martello. It says, "Therefore, in the final</p> <p>13 analysis, I believe our lack of a full product</p> <p>14 line coverage, plus our lack of market leadership</p> <p>15 versus Eaton, were the main factors which led to</p> <p>16 Mack's final decision."</p> <p>17 A Yes. We could not, one for one, replace</p> <p>18 the products that they purchased from Eaton, and</p> <p>19 Eaton had -- as you look up in number three, risk</p> <p>20 of price retaliation from Eaton. Eaton had told</p> <p>21 them they would have price retaliation on the</p> <p>22 product that they had to buy from Eaton.</p>	<p style="text-align: right;">Page 65</p> <p>1 Mack about pricing of any products?</p> <p>2 A No, sir.</p> <p>3 Q You said the head of purchasing at Mack,</p> <p>4 Hans --</p> <p>5 A Hans Walter.</p> <p>6 Q Hans Walter. And he said something to</p> <p>7 you that caused you to write this. Now, what did</p> <p>8 he say?</p> <p>9 A He said -- if you go back to the various</p> <p>10 reasons why Mack had made that decision, that's</p> <p>11 what the discussion was with Hans Walter at the</p> <p>12 time. Immediately before I wrote this white paper</p> <p>13 is we were called in to -- he called us in, which</p> <p>14 we thought was to give us the go-ahead with this</p> <p>15 project because it had gone all the way up to</p> <p>16 legal documents being drafted.</p> <p>17 And we got called in and he told us that</p> <p>18 they were not going through with the -- with the</p> <p>19 agreement that we had been working on, and these</p> <p>20 are the reasons why.</p> <p>21 Q What did he say about Eaton?</p> <p>22 A He said that they had a meeting with</p>

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<p style="text-align: right;">Page 66</p> <p>1 Eaton, because one of the things that we wanted in 2 the legal document was indemnification from Mack 3 as to the patents that we thought they were in 4 violation of for 13- and 18-speeds. That's this 5 first statement. 6 He said -- I'll paraphrase; I can't 7 remember exact words. But that they, being Mack, 8 had discussions with Eaton, and Eaton told them 9 that they knew they were in violation. They 10 didn't mind it as long as it was just using the 11 Mack product for Mack. 12 But if they decided to sell that 13 product, and especially if whoever they sold it to 14 decided to market it, that they would file a 15 lawsuit against them for violation of the 16 particular patent that we felt was in violation of 17 and, therefore, Mack could not indemnify us 18 because they just didn't want to take that risk. 19 That's number one. 20 Number two, they said that -- in the 21 discussion -- that they were told that if they 22 went through with this, they would have some price</p>	<p style="text-align: right;">Page 68</p> <p>1 A Yes. 2 Q Okay. I take it your reference to your 3 belief that your lack of a full product line 4 coverage is the issue we talked about above, that 5 Rockwell at that time didn't have LLs, high-torque 6 13s, 18s, 15s and so forth; is that fair? 7 A My -- my reference is that we could not 8 protect Mack on an immediate basis, one-to-one 9 product coverage, against Eaton, yes. 10 Q Because you didn't have certain of those 11 transmissions, fair? 12 A That's correct. 13 Q Now, coming out of this negotiation with 14 Mack, you then had some recommendations. You've 15 got on the next page, for example, you have the 16 impact on transmissions. 17 Do you see where I am in the second 18 paragraph there, the middle of the page? 19 A Yes. 20 Q Okay. It says, "The major strategic 21 impacts on the transmission business," that it 22 weakens your standard position strategy with</p>
<p style="text-align: right;">Page 67</p> <p>1 retaliation from Eaton on the products that they 2 currently bought from Eaton. 3 Q And who did the guy that you were 4 talking to at Mack, who did he say made those 5 comments to him? 6 A Didn't give a name. I don't know who he 7 talked to. I don't know if he talked to him 8 specifically, or that the engineers talked to the 9 legal guys, talked to the legal guys. He just 10 said "Eaton." 11 Q Other than the conversation you had with 12 someone from Mack who said they talked to some 13 unidentified person, or maybe people, at Eaton, do 14 you have any basis for this statement here? 15 A No, no. 16 Q All right. Now, down below you say in 17 the paragraph I read, "Therefore, in the final 18 analysis, I believe our lack of a full product 19 line coverage, plus our lack of market leadership 20 versus Eaton, were the main factors which led to 21 Mack's final decision." 22 Do you see where I am?</p>	<p style="text-align: right;">Page 69</p> <p>1 Freightliner. 2 Do you see that? 3 A Yes. 4 Q What was that a reference to? 5 A If you looked at one of the things 6 previously that Mack said, it was right after 7 Freightliner purchased the Sterling business, or 8 the Ford Truck business, and we wanted the -- some 9 of the Mack products for the Sterling Truck 10 because the Sterling Truck had a lot of -- call it 11 vocational applications. That's what that means. 12 Q Okay. And just so we're clear, so when 13 you say "vocational applications," I take it -- 14 A Other than -- other than 9- and 15 10-speeds. 16 Q So -- so let me make sure we're clear on 17 the record. 18 So at this point, sometime in '97 19 period, Freightliner purchases a company called 20 Sterling, Sterling Trucks? 21 A Yes. 22 Q And Sterling Trucks is primarily</p>

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<p>1 manufacturing trucks that are for on/off highway 2 uses? 3 A Yeah, it would be one of their 4 functions, yes. 5 Q So they need multispeed transmissions, I 6 take it? 7 A Yes. 8 Q And at that point, Rockwell didn't have 9 the multispeed transmissions, right? 10 A Yes. 11 Q So you're saying that Freightliner's 12 purchase of Sterling makes it harder for you to 13 maintain a standard position because you don't 14 have the transmissions they need for this new 15 business they purchased? Is that -- 16 A Yes, it weakens our standard position 17 strategy with Freightliner because we didn't have 18 that. 19 Q Then you say, number two, that of the 20 major strategic impacts on the transmission 21 business, that this negotiation with Mack resulted 22 in is, it says, "It further emphasizes our</p>	<p>1 Q Well, let's be clear on the record 2 because you say "just as they threatened Mack"? 3 A Just as I believe they threatened 4 Mack -- 5 Q Fair enough. 6 A -- from my discussions with Mack 7 personnel. 8 Q Right. Just so we're clear on the 9 record, you, Rick Martello, have no firsthand 10 knowledge of any communications from anyone at 11 Eaton at any time and any OEM discussing the 12 prices they're going to sell any transmission? 13 A That's correct. 14 Q Then below you say, "Freightliner: The 15 loss of Mack makes the need for standard position 16 at Freightliner even more important." 17 What did you mean by that? 18 A It was always my belief that you needed 19 to be standard position at one OEM to have a base 20 volume, and since we didn't get the Mack, it made 21 holding on to Freightliner more important. 22 Q Okay. But the way I understood your</p>
Page 71	Page 73
<p>1 vulnerability at the OEM's unless we have a full 2 product line." 3 What did you mean by your vulnerability 4 at the OEMs? 5 A It led to -- it could lead to the same 6 thing as happened at Mack, and that is Eaton 7 coming in and making price threats that on the 8 products that they were selling to the OEM where 9 we didn't have a product that was 100 percent 10 applicable to that product. 11 Q Let me make sure I'm clear on the 12 record. 13 So you didn't have the full product 14 line, the multispeeds and the LL, right? 15 A Correct. 16 Q So your concern is that Eaton might 17 threaten OEMs with price increases if -- what? 18 A If an -- if an OEM put us in standard 19 position on the products we had, it left the 20 vulnerability of the OEMs to be subject to Eaton's 21 threats of price increases, just as they 22 threatened Mack.</p>	<p>1 testimony, it would be difficult at Freightliner 2 because you don't have some of the transmissions 3 that the new Sterling business they bought needs 4 for their operation? 5 A Well, that's what it meant up there. 6 Down here, it just means that since we didn't -- 7 since we couldn't get standard position at Mack, 8 it meant keeping Freightliner is even more 9 important because you needed that volume base. 10 Q Okay. Now, carrying over on the next 11 page, then, you say one of the things you should 12 do to help you preserve standard position with 13 Freightliner is to fill the gap on some of these 14 multispeed transmissions that they're going to 15 need for their new Sterling business, right? 16 A Uh-huh. 17 Q Am I reading that right? 18 A Yes, all these things, yes. 19 Q So you say, number two, you should offer 20 to work with Freightliner on an exclusive program 21 for transmission shift systems with 22 Rockwell/WABCO; an exclusive automated manual</p>

19 (Pages 70 to 73)

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<p style="text-align: right;">Page 74</p> <p>1 6-speed transmission for their medium-duty,  2 business class truck; an exclusive, automated LL  3 ratio 8- or 10-speed for the vocational market.  4 And then you list some 5- and 6-speeds, 7-speeds,  5 9 and 10s, 15s and 18s and LLs and so forth?  6 A Right.  7 Q Am I right, Mr. Martello?  8 A Yes, so it says.  9 Q And I take it this is essentially your  10 recommendation to your management at Rockwell that  11 it's important for you to maintain standard  12 position at Freightliner, you should offer  13 Freightliner an exclusive ability to purchase some  14 of these products which we're going to have to  15 develop, right, one way or the other, either  16 develop or buy or otherwise add to your product  17 portfolio?  18 MS. DUNCAN HACKETT: Objection.  19 THE WITNESS: Exclusivity in working  20 with them to develop it would mean that, for a  21 limited time, they would have rights to it, yes.  22</p>	<p style="text-align: right;">Page 76</p> <p>1 But they would understand -- customers  2 understand that if it is a short period of time  3 because they helped you develop it and they helped  4 you market it and begin to market it.  5 Q And subsequent to this, now, you did  6 have a contract with Freightliner where you did  7 offer them exclusive rights and said you'd  8 introduce some of these products and they could be  9 exclusive to Freightliner for some period of time.  10 Is that fair?  11 A One product, yes.  12 Q Let's mark as Exhibit 2 to your  13 deposition --  14 A Excuse me?  15 Q I'm going to mark as Exhibit 2 to your  16 deposition a June 3rd, 1998 letter on Meritor  17 letterhead from R. Martello, General Manager,  18 Transmission Clutch and Driveline, to James C.  19 Orchard, President and CEO, ZF Group, North  20 American Operations, produced to me by your  21 lawyers out of the company's files,  22 ZFMA0014533043. I'll ask you to take a look at</p>
<p style="text-align: right;">Page 75</p> <p>1 BY MR. OSTOYICH:  2 Q Let me make sure we're clear on the  3 record.  4 So, in other words, you're telling your  5 management we didn't get the Mack opportunity,  6 it's really important for us to maintain standard  7 position at Freightliner. We know Freightliner  8 has this new Sterling business, they need some  9 transmissions that we don't currently have on the  10 market, right? Fair?  11 A Correct.  12 Q And so you're saying we should come up  13 with a proposal to work with Freightliner and give  14 them exclusive access to some of these products  15 which we'll have to design and manufacture and  16 develop?  17 A In conjunction with them, yes, but  18 exclusivity in this case meant a period of time  19 because we could not survive in the marketplace,  20 nor anybody, just giving exclusivity to one  21 customer because you would totally damage your  22 relationship with all the other customers.</p>	<p style="text-align: right;">Page 77</p> <p>1 that.  2 (Martello Deposition Exhibit No. 2 was  3 marked for identification.)  4 THE WITNESS: Excuse me, just a point  5 for me. Since these are -- have been marked, do I  6 give them back to someone, or are these mine?  7 BY MR. OSTOYICH:  8 Q She's going to take all the exhibits  9 back at the end.  10 MS. DUNCAN HACKETT: Just hold on to  11 them for now.  12 MR. OSTOYICH: She's the official  13 custodian of the --  14 THE WITNESS: I don't remember this, but  15 it is my signature, so I must have written it.  16 BY MR. OSTOYICH:  17 Q Okay. Have you had a chance to look at  18 Exhibit 2 to your deposition?  19 A I looked at the letter itself. Yes.  20 Q So this -- you said this is your  21 signature, and just so we're clear on the record,  22 on the second page of this, where it says</p>

20 (Pages 74 to 77)

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<p style="text-align: right;">Page 78</p> <p>1 R. Martello, General Manager, Transmission, Clutch 2 and Driveline, there's a signature, and that's 3 your signature; you wrote it, right? 4 A Correct. 5 Q Okay. This is a letter that you sent to 6 Mr. James Orchard, President and CEO of ZF Group, 7 North American Operations, in the ordinary course 8 of your business on June 3rd, 1998, right? 9 A Yes. 10 Q You say -- I take it this is initiating 11 or furtherance of potential joint venture between 12 Meritor's transmission business and ZF's 13 transmission business? 14 A Yes. 15 Q So, "Dear Mr. Orchard, I apologize that 16 I could not be part of your teleconference on 17 May 20, 1998." 18 Sounds like you were out of the country, 19 in Japan, but you're now getting back in touch 20 with him to see if you can further a potential 21 joint venture. Is that fair? 22 A That's correct.</p>	<p style="text-align: right;">Page 80</p> <p>1 Q Or from ZF. 2 Did you have plans to develop them 3 internally, these transmissions, the medium-duty 4 and the 13 through 20? 5 A We never had anything on the board for 6 medium duty, no. We had, as we'll say in the back 7 here, plans on deriving stuff from what we had, 8 yes. 9 Q What do you mean, deriving stuff from 10 what you had? 11 A Well, taking the base 9, 10 and 12 low-torque 13 and deriving products from it, yes. 13 Q You said say back here you can see that. 14 What are you referring to? 15 A I think it's -- well, one, two, three, 16 four, five -- page 5, I guess. 17 Q Is that the one at the top that says 18 "Product Development Strategy"? 19 A Yes. 20 Q And is this a page that you -- was 21 prepared as part of your strategic planning 22 process in April of 1998?</p>
<p style="text-align: right;">Page 79</p> <p>1 Q Okay. The second part you say, "I 2 believe an agreement between our companies can be 3 a great opportunity for both of us. Our strategic 4 business plan for transmissions is to become a 5 full-line supplier of transmissions for sales in 6 North American-style trucks worldwide. We 7 currently have plans for medium duty, as well as 8 13- through 20-speed transmissions." 9 Do you see that? 10 A Yes. 11 Q And I take it, at that time, the company 12 had plans to develop a medium-duty, but you didn't 13 have a medium-duty transmission offering at the 14 time? 15 A We had plans to obtain the 16 transmissions. I say in here, "in some manner." 17 Q What do you mean, obtain in some manner? 18 A As I said before, whether it was from 19 Mack or from TTC or from some other company or 20 develop them our self from ZF. I mean -- 21 Q I missed the last part of that -- 22 A Or from ZF.</p>	<p style="text-align: right;">Page 81</p> <p>1 A Yes. 2 Q And you sent this to Mr. Orchard to show 3 him that the company had plans to internally 4 develop some heavy-duty transmissions that you 5 didn't currently have? 6 A Correct. 7 Q And so you say your plan was to 8 internally develop some 9-speed, 10-speed, LLs, 9 and a splitter, right? 10 A Yes. 11 Q What's a splitter? 12 A I don't know what that reference is, to 13 be honest with you. A splitter is the rear box, 14 but I don't know what that reference is. 15 At this point in time, I couldn't tell 16 you what that reference is. The LLs, I know that 17 reference because we were looking at derivatives 18 of our 10-speed that could cover the majority of 19 the LL business. 20 Q You use the phrase "derivative" again. 21 What do you mean, a derivative of your 10-speed 22 that could cover the LL?</p>

21 (Pages 78 to 81)

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<p style="text-align: right;">Page 82</p> <p>1 A Take the base box of the 10-speed and</p> <p>2 make changes that provides you with a -- so it's</p> <p>3 not redesigning a complete transmission; it's</p> <p>4 taking what you have, making changes to it, so we</p> <p>5 would consider that a derivative of the product.</p> <p>6 Q I see. Did the company at this time,</p> <p>7 did you have plans to start from scratch and</p> <p>8 design any of these transmissions?</p> <p>9 A No. What I have here, no.</p> <p>10 Q Why not? Was that a more</p> <p>11 resource-intensive to start from scratch?</p> <p>12 A It would be more resource-intensive,</p> <p>13 yes.</p> <p>14 Q More costly to the company?</p> <p>15 A Yes.</p> <p>16 Q So I take it the company decided rather</p> <p>17 than engage in the costly, resource-intensive of</p> <p>18 actually designing these products from scratch,</p> <p>19 you would derive them from some other products</p> <p>20 that you had?</p> <p>21 A If possible, yes.</p> <p>22 Q What do you mean, "if possible"?</p>	<p style="text-align: right;">Page 84</p> <p>1 subsequently strike a partnership with ZF for</p> <p>2 medium-duty transmissions?</p> <p>3 A We were working on a medium-duty</p> <p>4 transmission from the -- before the joint venture</p> <p>5 started until after -- till the end of the joint</p> <p>6 venture. We were working on trying to develop a</p> <p>7 medium-duty transmission that would be applicable</p> <p>8 to both Europe and the United States.</p> <p>9 Q You say you were working on developing.</p> <p>10 You mean with ZF, or just independent?</p> <p>11 A ZF. ZF was doing it. We were providing</p> <p>12 data on what had to be done to make it useful in</p> <p>13 North America.</p> <p>14 Q So in other words, they had -- they had</p> <p>15 an equivalent transmission in Europe, but it had</p> <p>16 to be modified in some sense to make it acceptable</p> <p>17 for the U.S.?</p> <p>18 A I think they were developing a new</p> <p>19 transmission, but I wouldn't -- I don't know</p> <p>20 exactly.</p> <p>21 Q Okay. Did the joint venture ever</p> <p>22 commercialize -- finalize that process and</p>
<p style="text-align: right;">Page 83</p> <p>1 A Well, it would be difficult to make an</p> <p>2 automatic out of any of these products. It would</p> <p>3 be difficult to make a medium-duty out of any of</p> <p>4 these products and make it cost effective. So you</p> <p>5 have to do the most cost effective part, no matter</p> <p>6 what you're doing, so --</p> <p>7 Q And then right below that, you're</p> <p>8 telling Mr. Orchard that your strategic plan at</p> <p>9 that time in the spring of '98 was to develop</p> <p>10 partnerships for some of the other transmissions,</p> <p>11 the medium-duty and automated manual 12- through</p> <p>12 20-speed transmissions?</p> <p>13 A Well, that's basically what we were</p> <p>14 going to get from ZF. That's what we thought we</p> <p>15 could get from ZF at the time.</p> <p>16 Q Right. So you're telling him -- in</p> <p>17 other words, you're not going to internally</p> <p>18 develop these, but we are looking for</p> <p>19 partnerships, and you are a candidate for that</p> <p>20 partnership?</p> <p>21 A Yes.</p> <p>22 Q Did the -- did the joint venture</p>	<p style="text-align: right;">Page 85</p> <p>1 commercialize medium-duty?</p> <p>2 A No.</p> <p>3 Q Attached to this, then, after that is a</p> <p>4 sort of a proposal of the joint venture structure</p> <p>5 between Meritor Heavy Vehicle Systems and ZF that</p> <p>6 you sent Mr. Orchard, right?</p> <p>7 A Are you --</p> <p>8 Q The last four or five pages here?</p> <p>9 A Where it says "Proposed Joint Venture</p> <p>10 Structure between" -- yes. I was looking for an</p> <p>11 organizational chart, which I didn't see.</p> <p>12 Q What was the proposed term of the joint</p> <p>13 venture? Like if I look at No. 17 in your</p> <p>14 proposal, which is on the fourth page of the</p> <p>15 proposal, you say, "Initially and every five years</p> <p>16 thereafter," but was there a term that you were</p> <p>17 contemplating of the joint venture?</p> <p>18 A No. I mean, to be honest with you, we</p> <p>19 were looking at this joint venture being -- we</p> <p>20 certainly went into it as a forever type of</p> <p>21 situation.</p> <p>22 Q I take it it would be five years</p>

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<p>1 initially, but then you could reup it for</p> <p>2 additional --</p> <p>3 A No, it just says that every five years</p> <p>4 we would review the goals and objectives each</p> <p>5 company has for the joint venture, because we</p> <p>6 had -- one of the charts, I believe it's in here,</p> <p>7 is the goals and objectives of the joint venture,</p> <p>8 strategic goals.</p> <p>9 Q Where are you looking? Is that the</p> <p>10 page--</p> <p>11 A The second chart in that says "Strategic</p> <p>12 Goals" right after the letter.</p> <p>13 Q Strategic goals, and one of the goals of</p> <p>14 the joint venture would be to allow Meritor to</p> <p>15 become a full product line supplier?</p> <p>16 A Yes.</p> <p>17 Q In other words, to use the ZF products</p> <p>18 in Europe, modify them, bring them to the U.S.,</p> <p>19 and fill some of the gaps in your transmission</p> <p>20 offerings?</p> <p>21 MS. DUNCAN HACKETT: Objection.</p> <p>22 THE WITNESS: Well, the original portion</p>	<p>1 ask you to take a look at that.</p> <p>2 (Martello Deposition Exhibit No. 3 was</p> <p>3 marked for identification.)</p> <p>4 BY MR. OSTOYICH:</p> <p>5 Q And I'll point you to some specific</p> <p>6 pieces of it, but obviously flip through it.</p> <p>7 Okay. Have you had a chance to look at</p> <p>8 Exhibit 3, Mr. Martello?</p> <p>9 A I didn't read all the way through it. I</p> <p>10 know what it is.</p> <p>11 Q You recognize this?</p> <p>12 A Yes, yes.</p> <p>13 Q This is the contract that Meritor Heavy</p> <p>14 Automotive Systems had with Freightliner in</p> <p>15 October 1998 for purchase of various drivetrain</p> <p>16 components?</p> <p>17 A Correct.</p> <p>18 Q Good. On the second page there's a</p> <p>19 section at the top that says "Exclusive</p> <p>20 Purchases."</p> <p>21 "Supplier," and that's obviously</p> <p>22 Meritor, "agrees to provide Freightliner with the</p>
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<p>1 of ZF was to bring in automated manuals.</p> <p>2 BY MR. OSTOYICH:</p> <p>3 Q And that would allow you to fill some of</p> <p>4 the gaps in the transmission products you had and</p> <p>5 become a full product line supplier?</p> <p>6 A Well, in that respect, it allowed us to</p> <p>7 bring in the technology that was not even</p> <p>8 available in the United States.</p> <p>9 Q Would it allow you to extend your</p> <p>10 product line?</p> <p>11 A Yes.</p> <p>12 Q What about LLs? Were you looking at LLs</p> <p>13 with ZF to supply those?</p> <p>14 A No. If you look at the chart, that was</p> <p>15 one of the things we were looking to do from our</p> <p>16 10-speed, and we had -- looking at what we called</p> <p>17 a 10C and an 11L, I think, were the two</p> <p>18 terminologies we used.</p> <p>19 Q I want to show you, Mr. Martello,</p> <p>20 Exhibit 3 to your deposition, which is the</p> <p>21 Freightliner supply agreement with Meritor Heavy</p> <p>22 Automotive Systems from October of 1998, and I'll</p>	<p>1 opportunity for limited exclusive original</p> <p>2 equipment manufacturer rights to purchase certain</p> <p>3 of the products through the dates set forth in</p> <p>4 Exhibit B."</p> <p>5 Do you see that?</p> <p>6 A Uh-huh.</p> <p>7 Q I take it that's the reference to the</p> <p>8 concept we just discussed where you would, in an</p> <p>9 effort to maintain standard position at</p> <p>10 Freightliner, you were offering them the exclusive</p> <p>11 ability to purchase some products that you were</p> <p>12 going to develop. Is that fair?</p> <p>13 MS. DUNCAN HACKETT: Objection.</p> <p>14 THE WITNESS: Through the date set forth</p> <p>15 in Exhibit B, yes.</p> <p>16 BY MR. OSTOYICH:</p> <p>17 Q And then if we look at Exhibit B, if you</p> <p>18 look down at the lower right-hand corner, there's</p> <p>19 page numbers from the Bates stamp that your</p> <p>20 lawyers put on this, and there's a page that ends</p> <p>21 with 6691, and that's Exhibit B. And while you're</p> <p>22 looking at that, I'll just identify it. It came</p>

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<p style="text-align: right;">Page 90</p> <p>1 from the company's file, ZFMA006653 to 702.</p> <p>2 Do you see where I am? At the top it</p> <p>3 says Exhibit B, "Supply Agreement Product</p> <p>4 Exclusives"?</p> <p>5 A Yes.</p> <p>6 Q And this is the list of the products</p> <p>7 that you were agreeing to provide Freightliner the</p> <p>8 exclusive right -- exclusive opportunity to</p> <p>9 purchase these from the time of their</p> <p>10 introduction, right?</p> <p>11 A For a period to be determined from date</p> <p>12 of introduction, yes.</p> <p>13 Q Okay. So in your reading of the first</p> <p>14 paragraph, it says Supplier agrees to provide</p> <p>15 Freightliner the opportunity to exclusively</p> <p>16 purchase the following components for a period to</p> <p>17 be determined from the date of introduction,</p> <p>18 correct?</p> <p>19 A Correct.</p> <p>20 Q And then it lists down in the left-hand</p> <p>21 column the products, and then when they're going</p> <p>22 to be introduced and available in the right-hand</p>	<p style="text-align: right;">Page 92</p> <p>1 venture with a third party.</p> <p>2 A Correct.</p> <p>3 Q And at this point, there's an asterisk</p> <p>4 that says, "Assuming the joint venture with a</p> <p>5 third party." And at this point, you were</p> <p>6 negotiating with ZF to form that joint venture,</p> <p>7 fair?</p> <p>8 A Correct.</p> <p>9 Q Now, did the company introduce and make</p> <p>10 available an 8 LL transmission by June of 2000?</p> <p>11 A We had -- no.</p> <p>12 Q What about the 6-speed automated</p> <p>13 mechanical transmission?</p> <p>14 A That was to be purchased from TTC.</p> <p>15 Q And was it made available by --</p> <p>16 A It was available at the point in time</p> <p>17 that we wrote this document.</p> <p>18 Q Was it available exclusively to --</p> <p>19 A Freightliner.</p> <p>20 Q -- Freightliner?</p> <p>21 A Freightliner never made the --</p> <p>22 Freightliner never accepted to do it.</p>
<p style="text-align: right;">Page 91</p> <p>1 column, right?</p> <p>2 A Correct.</p> <p>3 Q So, for example, you're offering</p> <p>4 Freightliner the opportunity to purchase --</p> <p>5 exclusively purchase the 8 LL transmission for</p> <p>6 some period of time to be determined after it's</p> <p>7 introduced and available in June of 2000?</p> <p>8 A Yes.</p> <p>9 Q And you're offering them the opportunity</p> <p>10 to exclusively purchase the 6-speed AMT -- which</p> <p>11 is I guess is an automated mechanical</p> <p>12 transmission?</p> <p>13 A Correct.</p> <p>14 Q -- for some period of time to be</p> <p>15 determined after you introduce it and make it</p> <p>16 available in June of 2000 also.</p> <p>17 A Yes.</p> <p>18 Q And then the same thing with the</p> <p>19 multispeed automated mechanical transmission, this</p> <p>20 says they'd have some opportunity for some period</p> <p>21 of time to purchase it exclusively after it's</p> <p>22 introduced in 1999, assuming you strike a joint</p>	<p style="text-align: right;">Page 93</p> <p>1 Q And what about the multispeed automated</p> <p>2 mechanical transmission?</p> <p>3 A Yes, that was the ZF transmissions, the</p> <p>4 12- and 16-speed.</p> <p>5 Q And was that made available --</p> <p>6 introduced and made available to Freightliner on</p> <p>7 an exclusive basis in 1999?</p> <p>8 A Back in '99, no. We never finished the</p> <p>9 joint venture at that point in time.</p> <p>10 Q Okay. So the joint venture</p> <p>11 negotiations, I take it, dragged on into '99; is</p> <p>12 that fair?</p> <p>13 A Yes.</p> <p>14 Q Let's -- let's mark as Exhibit 4 to your</p> <p>15 deposition a Meritor presentation that says</p> <p>16 "ZF Meritor Joint Venture Presentation to</p> <p>17 Corporate Officers" from January 22, 1999.</p> <p>18 It came from your files the company --</p> <p>19 your lawyers produced to me, ZFMA0368703 to 721,</p> <p>20 and I'll ask you to take a look at that.</p> <p>21 (Martello Deposition Exhibit No. 4 was</p> <p>22 marked for identification.)</p>

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<p style="text-align: right;">Page 94</p> <p>1 THE WITNESS: Okay.</p> <p>2 BY MR. OSTOYICH:</p> <p>3 Q Mr. Martello, have you had a chance to</p> <p>4 look at Exhibit 4 to your deposition?</p> <p>5 A I've read it, but I don't -- I don't</p> <p>6 remember this one at all.</p> <p>7 Q Okay. Is this a document that, as the</p> <p>8 General Manager of Transmission, Clutch and</p> <p>9 Driveline, you were involved in preparing for the</p> <p>10 corporate officers of Meritor to explain what sort</p> <p>11 of a joint venture should be formed with ZF and</p> <p>12 how it should be structured and so forth?</p> <p>13 MS. DUNCAN HACKETT: Objection.</p> <p>14 THE WITNESS: As I say, I don't remember</p> <p>15 this document. I don't know where it was</p> <p>16 presented. I don't know who presented it. I</p> <p>17 don't remember this document at all.</p> <p>18 BY MR. OSTOYICH:</p> <p>19 Q Okay. Is it likely, sir, that you were</p> <p>20 involved in preparing this for the corporate</p> <p>21 officers of Meritor?</p> <p>22 MS. DUNCAN HACKETT: Objection.</p>	<p style="text-align: right;">Page 96</p> <p>1 Q I take it, as part of the joint venture</p> <p>2 negotiations with ZF, obviously you're talking</p> <p>3 about the structure, and then there's some</p> <p>4 discussion of that structure on the subsequent</p> <p>5 pages, the potential structure of that agreement,</p> <p>6 right?</p> <p>7 A Yes.</p> <p>8 Q Was part of the structure of the joint</p> <p>9 venture agreement so Meritor put all of its</p> <p>10 transmission and clutch assets into a separate</p> <p>11 company, right?</p> <p>12 A Yes.</p> <p>13 Q And ZF paid Meritor roughly \$51 million</p> <p>14 as part of its participation in the joint venture?</p> <p>15 MS. DUNCAN HACKETT: Objection.</p> <p>16 THE WITNESS: ZF paid Meritor a sum. I</p> <p>17 see what the -- I see what this page 5 says. I</p> <p>18 don't know if that's the right number, but I would</p> <p>19 say it is because of the page. But, again, I</p> <p>20 don't remember this.</p> <p>21 BY MR. OSTOYICH:</p> <p>22 Q You're aware that as part of the joint</p>
<p style="text-align: right;">Page 95</p> <p>1 THE WITNESS: Preparing the actual</p> <p>2 document, no, I don't believe so.</p> <p>3 BY MR. OSTOYICH:</p> <p>4 Q How about overseeing the preparation by</p> <p>5 people in your organization of a document</p> <p>6 explaining the joint venture you're in the process</p> <p>7 of negotiating?</p> <p>8 A I would say providing information for</p> <p>9 it, yes. But, again, I don't remember this</p> <p>10 document. I don't know who it was presented to,</p> <p>11 even.</p> <p>12 Q The cover page says "Presentation to</p> <p>13 Corporate Officers" in January of 1999. I take it</p> <p>14 this reflects the company was negotiating with</p> <p>15 ZF/AG this joint venture in early 1999, fair?</p> <p>16 A Yeah, I would imagine it was presented</p> <p>17 to the Meritor corporate officers.</p> <p>18 Q There's an agenda on the second page</p> <p>19 that says, "Define the JV structure, define the</p> <p>20 due diligence work to be performed," and so on.</p> <p>21 Do you see where I am?</p> <p>22 A Yes.</p>	<p style="text-align: right;">Page 97</p> <p>1 venture, ZF paid Meritor a multimillion-dollar sum</p> <p>2 to participate in the joint venture?</p> <p>3 A Correct.</p> <p>4 Q And then -- I take it it was a formal</p> <p>5 process? In other words, this reference on the</p> <p>6 agenda page, due diligence, there was a formal due</p> <p>7 diligence process that was engaged in between the</p> <p>8 two parties?</p> <p>9 A Absolutely, yes.</p> <p>10 Q The time schedule proposed, tell me a</p> <p>11 little bit about that. On the next page, which is</p> <p>12 page 6 of this presentation, it says the due</p> <p>13 diligence proposed schedule was February 1st to</p> <p>14 February 5th, 1999. Do you see that?</p> <p>15 A Uh-huh.</p> <p>16 Q So I take it that reflects sometime in</p> <p>17 the winter of '99, there was going to be a due</p> <p>18 diligence between each of the companies so they</p> <p>19 could look at each other's businesses and figure</p> <p>20 out whether it made sense to engage in the joint</p> <p>21 venture?</p> <p>22 MS. DUNCAN HACKETT: Objection.</p>

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<p style="text-align: right;">Page 98</p> <p>1 BY MR. OSTOYICH:</p> <p>2 Q Is that right, Mr. Martello?</p> <p>3 A That is what the statement says, yes.</p> <p>4 Q Did you in fact engage in a due</p> <p>5 diligence process as part of the formation of the</p> <p>6 joint venture with ZF?</p> <p>7 A Was there due diligence done? Yes.</p> <p>8 Q And was the due diligence sometime in</p> <p>9 the winter of 1999?</p> <p>10 A I believe it was.</p> <p>11 Q And was it a four-day period in early</p> <p>12 February?</p> <p>13 A Four months, maybe, but not four days.</p> <p>14 Q You're laughing when you say that.</p> <p>15 A It was a long, drawn-out process, yes.</p> <p>16 Q Due diligence was a long, drawn-out</p> <p>17 process?</p> <p>18 A Yes.</p> <p>19 Q As part of that due diligence, did ZF</p> <p>20 get -- did you provide access to ZF on the</p> <p>21 G platform series of manual transmissions?</p> <p>22 MS. DUNCAN HACKETT: Objection.</p>	<p style="text-align: right;">Page 100</p> <p>1 clear on the record, this is a presentation that</p> <p>2 you prepared for the Board of Directors of Meritor</p> <p>3 explaining the potential negotiations with ZF over</p> <p>4 the joint venture in May of 1999; is that right?</p> <p>5 A I don't honestly remember who it was</p> <p>6 presented to.</p> <p>7 Q But you did prepare it for some --</p> <p>8 A Yes, for a presentation.</p> <p>9 Q Down at the bottom of the left-hand side</p> <p>10 of the first page, it says "Board of Directors,</p> <p>11 Revised May 25th, 1999." Do you see that?</p> <p>12 A Yes.</p> <p>13 Q Does that refresh your memory that you</p> <p>14 prepared this for a Board of Directors meeting in</p> <p>15 May of 1999?</p> <p>16 A I don't know if it meant the Board of</p> <p>17 Directors of the joint venture, which didn't exist</p> <p>18 at the time, or that somebody else presented it.</p> <p>19 I made absolutely no presentations</p> <p>20 personally to the Board of Directors of Meritor,</p> <p>21 so --</p> <p>22 Q Did you prepare this document for</p>
<p style="text-align: right;">Page 99</p> <p>1 THE WITNESS: There was no G platform at</p> <p>2 the time.</p> <p>3 BY MR. OSTOYICH:</p> <p>4 Q I'm going to show you another document,</p> <p>5 Mr. Martello. We're going to mark it as Exhibit 5</p> <p>6 to your deposition.</p> <p>7 This is a ZF Meritor joint venture</p> <p>8 presentation, Board of Directors, from May of</p> <p>9 1999. I'm going to ask you to take a look at that</p> <p>10 one.</p> <p>11 (Martello Deposition Exhibit No. 5 was</p> <p>12 marked for identification.)</p> <p>13 BY MR. OSTOYICH:</p> <p>14 Q While you're flipping through this, I'll</p> <p>15 identify it for the record. It came from your</p> <p>16 files, ZFMA0371511 to 17, and just let me know</p> <p>17 when you've had a chance to look at it.</p> <p>18 A Yes, this is something I did.</p> <p>19 Q I'm sorry, I didn't catch that?</p> <p>20 A This is something that I wrote,</p> <p>21 presented.</p> <p>22 Q Okay. So this is a -- just so we're</p>	<p style="text-align: right;">Page 101</p> <p>1 someone else --</p> <p>2 A It's something that I prepared.</p> <p>3 Q Fair enough. And you prepared this in</p> <p>4 the ordinary course of your business when you were</p> <p>5 the General Manager of the Transmission, Clutch</p> <p>6 and Driveline business of Meritor?</p> <p>7 A Correct.</p> <p>8 Q On the first page you have a history,</p> <p>9 and I take it this is a little snapshot of the</p> <p>10 history of the Rockwell/Meritor transmission</p> <p>11 business --</p> <p>12 A Uh-huh.</p> <p>13 Q -- fair?</p> <p>14 You say the company entered the</p> <p>15 transmission business in 1987, the product line</p> <p>16 was limited to 9-, 10- and 13-speed transmissions,</p> <p>17 and that's what we've been talking about where you</p> <p>18 didn't have the high-torque 13s and the</p> <p>19 multispeeds and the LLs at that point, right?</p> <p>20 MS. DUNCAN HACKETT: Objection.</p> <p>21 THE WITNESS: Yes. This was the</p> <p>22 original product line initiated by Meritor, yes,</p>

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<p>1 or Rockwell.</p> <p>2 BY MR. OSTOYICH:</p> <p>3 Q You say here that the product design was</p> <p>4 purchased from Nissan. What did you mean by that?</p> <p>5 A Correct.</p> <p>6 Q What does it mean the product line</p> <p>7 was -- product design was purchased from Nissan?</p> <p>8 A Rockwell at the time did not do the</p> <p>9 design work. Nissan did the design work.</p> <p>10 Q And at that time --</p> <p>11 A They contracted Nissan to design the</p> <p>12 transmissions.</p> <p>13 Q And Nissan was a car or truck</p> <p>14 manufacturer at the time?</p> <p>15 A It's a Japanese car and truck</p> <p>16 manufacturer.</p> <p>17 Q And so the company didn't design the 9-</p> <p>18 and 10-speed and 13-speeds that it began in the</p> <p>19 market; it purchased design from a Japanese</p> <p>20 company, Nissan?</p> <p>21 A Correct.</p> <p>22 Q And was Nissan selling its own 9- and</p>	<p>1 freight and usually used 9- and 10-speed</p> <p>2 transmissions.</p> <p>3 Q You said "they usually used 9- and</p> <p>4 10-speed transmissions." What do you mean, they</p> <p>5 usually used them?</p> <p>6 A Some fleets used 7-speed, some fleets</p> <p>7 used 13-speeds, but the majority of the linehaul</p> <p>8 business, great majority, was 9- and 10-speed</p> <p>9 transmissions.</p> <p>10 Q I take it from a functional perspective,</p> <p>11 you can use any kind of transmission to drive on</p> <p>12 highway, and you can use any kind of transmission</p> <p>13 to drive off highway; is that fair?</p> <p>14 MS. DUNCAN HACKETT: Objection.</p> <p>15 THE WITNESS: Not economically.</p> <p>16 BY MR. OSTOYICH:</p> <p>17 Q There are fleets that use 13-speeds on</p> <p>18 the highway?</p> <p>19 A Yes.</p> <p>20 Q Are there fleets that use 18-speeds and</p> <p>21 20-speeds if they're on-highway driving?</p> <p>22 A Not to my knowledge. I mean --</p>
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<p>1 10-speed and 13-speed transmissions for class 8</p> <p>2 trucks in North America?</p> <p>3 A Not to my knowledge.</p> <p>4 Q Were they -- were they selling trucks</p> <p>5 outside North America, class 8-equivalent trucks?</p> <p>6 A Outside North America, they wouldn't be</p> <p>7 the same as a North America truck, but I would</p> <p>8 imagine Nissan had class 8 trucks for the rest of</p> <p>9 the world.</p> <p>10 Q Do you know one way or the other at the</p> <p>11 time whether they offered class 8 trucks?</p> <p>12 A No. I had no dealings with Nissan.</p> <p>13 This is before my time in transmissions.</p> <p>14 Q On the last bullet there you say that</p> <p>15 the limited product line was aimed at the major</p> <p>16 fleet's linehaul business.</p> <p>17 A Correct.</p> <p>18 Q What did you mean, "linehaul business"</p> <p>19 there?</p> <p>20 A We segregated the market into linehaul,</p> <p>21 vocational, and specialty. And linehaul meant the</p> <p>22 major fleets that had tractors that carried</p>	<p>1 Q What about 9s and 10s, are there fleets</p> <p>2 that use 9s and 10s for on/off-highway driving?</p> <p>3 A Not really to my knowledge. It would be</p> <p>4 very special if they did.</p> <p>5 Q I want to look at a couple pages</p> <p>6 forward. It's got on the one, two, three -- on</p> <p>7 the fourth page of the document, you have a page</p> <p>8 here that you wrote this says the initial results,</p> <p>9 and this is a summary of the initial results of</p> <p>10 the Rockwell/Meritor transmission business since</p> <p>11 its inception in 1987, right?</p> <p>12 Mr. Martello, is that right? You've got</p> <p>13 to be audible.</p> <p>14 A Correct.</p> <p>15 Q So you've got some results that the</p> <p>16 company realized up at the top, right? Right?</p> <p>17 A Correct.</p> <p>18 Q So for the court reporter, you're going</p> <p>19 to have to say it out loud so she can get you.</p> <p>20 A Correct. Shaking my head doesn't work.</p> <p>21 Q Then you've got a list, you say,</p> <p>22 "Meritor results not realized," right?</p>

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<p style="text-align: right;">Page 106</p> <p>1 A Yes.</p> <p>2 Q And that's the results that, as the</p> <p>3 General Manager of the Transmission, Clutch and</p> <p>4 Driveline business you said the company had not</p> <p>5 been able to realize since it began manufacturing</p> <p>6 transmissions in 1987, right?</p> <p>7 A Correct.</p> <p>8 Q First one, you say you "Have not</p> <p>9 achieved financial expectations," right?</p> <p>10 A Correct.</p> <p>11 Q "Have not achieved market penetration,"</p> <p>12 right?</p> <p>13 A Correct.</p> <p>14 Q And you say, "Products plagued by</p> <p>15 warranty issues," right?</p> <p>16 A That's what the statement says.</p> <p>17 Q So we're clear, that's a statement you</p> <p>18 wrote, right?</p> <p>19 A I believe that's a statement I wrote,</p> <p>20 yes.</p> <p>21 Q You say, cover -- "Meritor results not</p> <p>22 realized," you cover only 70 percent of the</p>	<p style="text-align: right;">Page 108</p> <p>1 technology superiority," right?</p> <p>2 A Correct.</p> <p>3 Q Now, on the next page, you've got a list</p> <p>4 of current obstacles, right?</p> <p>5 A Correct.</p> <p>6 Q And the first bullet point you say, "The</p> <p>7 OEM's reluctance to provide standard position</p> <p>8 without a full product line." Do you see that?</p> <p>9 A That is in the same reference I told you</p> <p>10 with Mack about the fact that every time we talked</p> <p>11 to an OEM, they were afraid of the retaliation in</p> <p>12 pricing that Eaton would do on the products that</p> <p>13 we didn't have, yes.</p> <p>14 Q And, again, so we're clear on the</p> <p>15 record, your knowledge of that is that people at</p> <p>16 OEMs told you some unidentified people at Eaton at</p> <p>17 some point --</p> <p>18 A That's correct.</p> <p>19 Q You have no firsthand knowledge or</p> <p>20 communication?</p> <p>21 A I have no firsthand knowledge of that.</p> <p>22 I have no reason to believe they would lie to me,</p>
<p style="text-align: right;">Page 107</p> <p>1 class 8 market, right?</p> <p>2 A That's correct.</p> <p>3 Q And that's in reference to the fact that</p> <p>4 the company at that time didn't offer products</p> <p>5 that filled some of these multispeed and LL</p> <p>6 applications, right?</p> <p>7 MS. DUNCAN HACKETT: Objection.</p> <p>8 THE WITNESS: It's reference that the</p> <p>9 products that we have covered about 70 percent of</p> <p>10 the class 8 market.</p> <p>11 BY MR. OSTOYICH:</p> <p>12 Q In other words, you didn't have products</p> <p>13 that customers wanted for the multispeeds and the</p> <p>14 LLs, right?</p> <p>15 MS. DUNCAN HACKETT: Objection.</p> <p>16 THE WITNESS: We did not have them at</p> <p>17 that time.</p> <p>18 BY MR. OSTOYICH:</p> <p>19 Q You say, "Eaton determined not to lose</p> <p>20 market share," right?</p> <p>21 A Correct.</p> <p>22 Q And you wrote, "Eaton continues</p>	<p style="text-align: right;">Page 109</p> <p>1 either.</p> <p>2 Q Were you -- you negotiate with OEMs to</p> <p>3 sell products to them, you have at times?</p> <p>4 A Excuse me?</p> <p>5 Q You've participated in negotiations with</p> <p>6 OEMs to sell products to them, right?</p> <p>7 A I have participated, yes.</p> <p>8 Q And you yourself have purchased products</p> <p>9 or you had purchasing responsibility in some your</p> <p>10 jobs, right?</p> <p>11 A That's correct.</p> <p>12 Q As part of the purchasing process, both</p> <p>13 sets try to get an advantage in the negotiations,</p> <p>14 right, the seller is trying to get a good price,</p> <p>15 and the buyer is trying to get a lower price</p> <p>16 typically, right?</p> <p>17 A Yes.</p> <p>18 Q And as part of that process, both sides</p> <p>19 occasionally bluff, right?</p> <p>20 MS. DUNCAN HACKETT: Objection.</p> <p>21 THE WITNESS: I don't believe I would</p> <p>22 ever threaten a customer.</p>

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<p style="text-align: right;">Page 110</p> <p>1 BY MR. OSTOYICH:</p> <p>2 Q Well, first, let's answer my question,</p> <p>3 which is as part of the negotiation of buying and</p> <p>4 selling products, one of the tools that both the</p> <p>5 buyer and the seller uses, and you yourself have</p> <p>6 probably participated in meetings like this, is</p> <p>7 people try and bluff occasionally, right?</p> <p>8 MS. DUNCAN HACKETT: Objection.</p> <p>9 THE WITNESS: The term "bluff" can be --</p> <p>10 can mean a multitude of things.</p> <p>11 I mean, there's a difference between</p> <p>12 bluffing that's -- that if you don't give me that</p> <p>13 price, I'm going to go see if I can get a better</p> <p>14 price from somebody else. That's a price in</p> <p>15 negotiations and things of that nature, but I</p> <p>16 don't believe that that bluffing -- I think</p> <p>17 there's a big difference between bluffing and</p> <p>18 threatening.</p> <p>19 BY MR. OSTOYICH:</p> <p>20 Q When a customer in a negotiation to buy</p> <p>21 products from you tells you something, you don't</p> <p>22 literally believe everything you they tell you is</p>	<p style="text-align: right;">Page 112</p> <p>1 BY MR. OSTOYICH:</p> <p>2 Q Why did you choose to believe that was</p> <p>3 truthful?</p> <p>4 A Because it came from more than just</p> <p>5 Mack.</p> <p>6 Q Who else?</p> <p>7 A It came from just about every OEM we</p> <p>8 talked to in one way or the other.</p> <p>9 Q Which -- which person at Freightliner?</p> <p>10 Anybody that directly told you that someone from</p> <p>11 Eaton had threatened them?</p> <p>12 A I don't remember.</p> <p>13 Q What about Volvo -- not Mack, but Volvo?</p> <p>14 A Larry Moore.</p> <p>15 Q What did he say?</p> <p>16 A He said that -- I remember him saying</p> <p>17 that if we were to do this, we would be under --</p> <p>18 we -- we could expect a response from Eaton that</p> <p>19 would raise the prices on all the products that</p> <p>20 you can't supply to us.</p> <p>21 Q Did he say anything else?</p> <p>22 A No.</p>
<p style="text-align: right;">Page 111</p> <p>1 true, right?</p> <p>2 MS. DUNCAN HACKETT: Objection.</p> <p>3 THE WITNESS: I have to believe, when</p> <p>4 I'm dealing with anyone, that they're just not out</p> <p>5 and out lying to me. My integrity is too high to</p> <p>6 believe that.</p> <p>7 BY MR. OSTOYICH:</p> <p>8 Q But at the same time, you understand,</p> <p>9 their not necessarily tipping their hand and</p> <p>10 showing you all their cards on the table?</p> <p>11 A Absolutely.</p> <p>12 Q Now, you chose, it sounds like, to</p> <p>13 believe OEMs, the guy from Mack, for example, when</p> <p>14 he said Eaton was threatening him with price</p> <p>15 increases?</p> <p>16 A Correct.</p> <p>17 Q But you don't in fact have any idea of</p> <p>18 what Eaton was discussing with the guy from Mack,</p> <p>19 firsthand?</p> <p>20 MS. DUNCAN HACKETT: Objection.</p> <p>21 THE WITNESS: I have no firsthand</p> <p>22 knowledge.</p>	<p style="text-align: right;">Page 113</p> <p>1 Q Did he say --</p> <p>2 A Not that I remember, but I remember</p> <p>3 that.</p> <p>4 Q So Mr. Moore at Volvo said they could</p> <p>5 expect that Eaton would raise prices?</p> <p>6 A Correct.</p> <p>7 Q I take it that he not say that Eaton had</p> <p>8 threatened him with a price increase?</p> <p>9 A No, he did not.</p> <p>10 Q What about International, International</p> <p>11 Truck?</p> <p>12 A I personally had had very little</p> <p>13 dealings with International.</p> <p>14 Q So I take it no one from International</p> <p>15 directly told you about any --</p> <p>16 A That's true.</p> <p>17 Q -- alleged Eaton threats, okay. Pair?</p> <p>18 A Those would be third and fourth hand.</p> <p>19 Q What about PACCAR, any discussions you</p> <p>20 had with PACCAR people along those lines?</p> <p>21 A Not personally, no. Most of my</p> <p>22 negotiations personally with OEMs was either Mack,</p>

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<p style="text-align: right;">Page 114</p> <p>1 Volvo, or Freightliner.</p> <p>2 Q Going back to the document you wrote,</p> <p>3 Mr. Martello, this presentation. Under the</p> <p>4 "Current Obstacles," in the second bullet there</p> <p>5 you wrote, "Lack of resources to compete in</p> <p>6 automation technology."</p> <p>7 What did you mean by that?</p> <p>8 A We had limited engineering ability, and</p> <p>9 to do automation technology like at this point in</p> <p>10 time, I was talking about ZF because that's what</p> <p>11 it was about, and ZF had a tremendous ability in</p> <p>12 automation technology that we just didn't have.</p> <p>13 Q And so I'm clear on the record, so</p> <p>14 rather than internally -- you didn't have the</p> <p>15 resources to internally develop automation</p> <p>16 technologies; you're looking at outsourcing and</p> <p>17 getting it from ZF in this case?</p> <p>18 A Correct.</p> <p>19 Q And that's for automated mechanical</p> <p>20 technology?</p> <p>21 A Correct.</p> <p>22 Q The next page, so it's probably the same</p>	<p style="text-align: right;">Page 116</p> <p>1 not accept that. That's what that is referencing.</p> <p>2 Q Okay. So -- you lost me. Is the</p> <p>3 6-speed AMT was a medium-duty transmission?</p> <p>4 A 6-speed, that's correct.</p> <p>5 Q Okay. So you -- you in fact had a</p> <p>6 marketing agreement with TTC or Spicer, you</p> <p>7 offered. You offered a 6-speed medium-duty</p> <p>8 transmission to Freightliner, but you didn't get</p> <p>9 that business due to cost and lack of fully</p> <p>10 complementary product line?</p> <p>11 A Yes.</p> <p>12 Q And what did you mean, "due to cost and</p> <p>13 lack of fully complementary product line"?</p> <p>14 A The cost that we -- the cost that we</p> <p>15 passed on from Spicer SADCV, Freightliner said was</p> <p>16 not competitive, I guess.</p> <p>17 Q What did you mean by Freightliner said</p> <p>18 there was a lack of fully complementary product</p> <p>19 line?</p> <p>20 A I honestly don't know -- it certainly</p> <p>21 had something to do with medium duty, but I don't</p> <p>22 know what the particulars were behind that</p>
<p style="text-align: right;">Page 115</p> <p>1 concept, it says, "Alternatives Considered," and</p> <p>2 you said that this references you considered</p> <p>3 purchasing the Mack product line, but they decided</p> <p>4 to retain the transmissions, right?</p> <p>5 Again, for the record, Mr. Martello,</p> <p>6 you've got to say it out loud.</p> <p>7 A That's correct.</p> <p>8 Q And you looked at a marketing agreement</p> <p>9 with Spicer, which I take it they're another</p> <p>10 transmission manufacturer?</p> <p>11 A That's really TTC.</p> <p>12 Q TTC was the same company as Spicer; they</p> <p>13 just changed the name?</p> <p>14 A Yeah. Spicer SADCV -- I don't know what</p> <p>15 their legal name is but it's one of the two.</p> <p>16 Q Okay. And then you say -- I guess that</p> <p>17 marketing agreement didn't work because it looks</p> <p>18 like TTC or Spicer lost Freightliner medium-duty</p> <p>19 business due to cost and lack of fully</p> <p>20 complementary product line; is that fair?</p> <p>21 A As you saw in the proposal to</p> <p>22 Freightliner, we offered them a 6 AMT. They did</p>	<p style="text-align: right;">Page 117</p> <p>1 particular statement.</p> <p>2 Q But I take it there was something --</p> <p>3 some other type of medium-duty transmissions that</p> <p>4 Freightliner wanted but wasn't available?</p> <p>5 A For medium duty. I wouldn't -- I don't</p> <p>6 remember, but it sounds like that.</p> <p>7 Q You say another road of alternatives</p> <p>8 that you considered in the third bullet there was,</p> <p>9 "Internal growth and development," but I take it</p> <p>10 there was a lack of resources and timing to create</p> <p>11 the transmissions that you needed internally and</p> <p>12 put them on the market; is that fair?</p> <p>13 A Yeah. We would have to hire major</p> <p>14 staff, which costs money and take time.</p> <p>15 Q Okay. And then on the last page of this</p> <p>16 presentation you prepared, there's a "Strategic</p> <p>17 Recommendations." You say, as a result of not</p> <p>18 having the internal resources and the timing and</p> <p>19 these other items that we had here, you're</p> <p>20 recommending that you form a joint venture with ZF</p> <p>21 in North America, fair?</p> <p>22 A Correct.</p>

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<p>1 Q I'm going to quickly mark,</p> <p>2 Mr. Martello -- I've got three or four similar</p> <p>3 presentations, which I guess over a period of</p> <p>4 probably a month or two -- in the summer of '99, I</p> <p>5 take it the joint venture negotiations are coming</p> <p>6 to a head in the summer of '99. Is that fair?</p> <p>7 A Correct.</p> <p>8 Q All right. Let's mark as Exhibit 6 --</p> <p>9 now, this is a presentation on Meritor letterhead,</p> <p>10 Heavy Vehicle Systems presentation by</p> <p>11 Mr. Mulchandani in April of 1999. And again, for</p> <p>12 the record, it came from the company's file,</p> <p>13 ZFMA0368676 to 702, and I'll ask you to take a</p> <p>14 look at that one.</p> <p>15 (Martello Deposition Exhibit No. 6 was</p> <p>16 marked for identification.)</p> <p>17 BY MR. OSTOYICH:</p> <p>18 Q Have you had a chance to take a look at</p> <p>19 it, Mr. Martello?</p> <p>20 A I've had a chance to look at it, yes.</p> <p>21 Not my presentation.</p> <p>22 Q So on the top of the second page, it</p>	<p>1 responsibilities as the General Manager, you had</p> <p>2 provided him with the information that went into</p> <p>3 this presentation, and he then, as the President</p> <p>4 of the Heavy Vehicle Systems, takes it to the next</p> <p>5 step and presents it to the Meritor Board, right?</p> <p>6 A I would say I provided him with the</p> <p>7 majority of this, yes.</p> <p>8 Q Okay. So if we look, for example, the</p> <p>9 fourth page in, it's got the Initial Transmission</p> <p>10 Strategy, which is the same language we just saw</p> <p>11 in your presentation, right?</p> <p>12 A Uh-huh.</p> <p>13 Q It explains that Meritor entered the</p> <p>14 business in 1987, the limited product line was</p> <p>15 aimed at the major fleet's linehaul business,</p> <p>16 right? That comes from your presentation? I take</p> <p>17 it you prepared that for Mr. Mulchandani, right?</p> <p>18 A I would say he took it off the same --</p> <p>19 the same thing.</p> <p>20 Q Then on the next page of the Initial</p> <p>21 Transmission Strategy, again, it's got the</p> <p>22 information that you prepared, Meritor results</p>
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<p>1 says that this is a presentation of</p> <p>2 Mr. Mulchandani presented to the Meritor Board of</p> <p>3 Directors in April of '99.</p> <p>4 I take it he was the head of the entire</p> <p>5 Heavy Vehicle Systems business at Meritor at the</p> <p>6 time?</p> <p>7 A Correct.</p> <p>8 Q And he was your boss in a sense, you</p> <p>9 reported to him?</p> <p>10 A That's correct.</p> <p>11 Q This presentation, the first few pages</p> <p>12 here, you'll see is very similar to the one we</p> <p>13 looked at just now that you drafted.</p> <p>14 I take it you had prepared that, and</p> <p>15 that he had taken it and was putting into this</p> <p>16 presentation to present to the Board of Directors</p> <p>17 of Meritor to explain why the joint venture with</p> <p>18 ZF should go forward. Is that fair?</p> <p>19 A I would say that's fair.</p> <p>20 MS. DUNCAN HACKETT: Objection.</p> <p>21 BY MR. OSTOYICH:</p> <p>22 Q And as part of your ordinary</p>	<p>1 realized, Meritor results not realized, right?</p> <p>2 A Mine doesn't seem to have that.</p> <p>3 Q Mine is on the page that ends with 80.</p> <p>4 A Oh, okay. I was looking for a separate</p> <p>5 page, yes.</p> <p>6 Q This is the same information you had in</p> <p>7 the prior presentation, now Mr. Mulchandani is</p> <p>8 telling the Board of Meritor these are the results</p> <p>9 that the company has realized with its</p> <p>10 transmission business, and these are the results</p> <p>11 the company has not realized, right?</p> <p>12 A Correct.</p> <p>13 Q So he's got the same information. So</p> <p>14 for the Meritor results not realized, again, the</p> <p>15 company has not achieved financial expectations,</p> <p>16 has not achieved market penetration, products</p> <p>17 plagued by warranty issues, cover only 75 percent</p> <p>18 of class 8 market, Eaton determined not to lose</p> <p>19 market share, and Eaton continues technology</p> <p>20 superiority, right?</p> <p>21 A That's what it says, yes.</p> <p>22 Q Then on the next page, again, it's got</p>

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<p>1 Current Obstacles to Success, and it's got the</p> <p>2 same kind of -- the same facts that you had in</p> <p>3 your presentation he's now presenting to the Board</p> <p>4 of Meritor, "Lack of resources and timing to</p> <p>5 obtain a full product line," right?</p> <p>6 MS. DUNCAN HACKETT: Objection.</p> <p>7 THE WITNESS: That's what it says, yes.</p> <p>8 BY MR. OSTOYICH:</p> <p>9 Q And then the next page, again, the same</p> <p>10 alternatives that you had listed that you</p> <p>11 considered, he's now presenting those to the</p> <p>12 Board, right?</p> <p>13 A Yes.</p> <p>14 Q Then it's got after that a summary of</p> <p>15 the joint venture, and I just want to ask you</p> <p>16 about the structure.</p> <p>17 So I take it this is the summary of the</p> <p>18 structure that you were contemplating the joint</p> <p>19 venture in the summer of '99 and were recommending</p> <p>20 that you go forward with the joint venture, fair?</p> <p>21 A Yes.</p> <p>22 Q So, again, it's got a reference here,</p>	<p>1 A I don't remember the total detail, but</p> <p>2 if there was pre-tax profit, it would be</p> <p>3 distributed such that Meritor would end up with an</p> <p>4 extra \$24 million over the period.</p> <p>5 Q So let me make sure I understand. It</p> <p>6 says, for example, it says, "The earn-out</p> <p>7 distribution period will be for 10 years."</p> <p>8 So in other words, over the next</p> <p>9 10 years from mid 1999 on, the joint venture, if</p> <p>10 it earns a profit above a certain level, will pay</p> <p>11 some portion of its earnings to -- to Meritor?</p> <p>12 A Correct.</p> <p>13 Q Okay. And that would be not paid in a</p> <p>14 lump sum in year one, but rather paid out over the</p> <p>15 next 10 years or so, right?</p> <p>16 A Correct.</p> <p>17 Q And it says that the projections are</p> <p>18 that Meritor would earn -- would receive that</p> <p>19 earn-out within 8 years?</p> <p>20 A Correct.</p> <p>21 Q And the earn-out is, I guess it's</p> <p>22 limited to \$24 million?</p>
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<p>1 it's a 50/50 ownership, 50 percent of the</p> <p>2 shareholders -- of the shares would be owned by</p> <p>3 ZF, the German company, and 50 percent by Meritor,</p> <p>4 some Meritor company, right?</p> <p>5 A Yes.</p> <p>6 Q The name, you decided to combine the two</p> <p>7 names so it's just ZF Meritor, right?</p> <p>8 A Correct.</p> <p>9 Q Meritor put -- assigned 60 percent of</p> <p>10 its ownership in the clutch business into the</p> <p>11 joint venture?</p> <p>12 A Correct.</p> <p>13 Q Then it's got ZF to pay Meritor</p> <p>14 \$51 million up front, right?</p> <p>15 A Correct.</p> <p>16 Q And then it says, "The JV to pay Meritor</p> <p>17 an additional \$24 million in earn-out payments."</p> <p>18 Do you see that?</p> <p>19 A Correct, that's what it says.</p> <p>20 Q What's an earn-out payment?</p> <p>21 A It tells you on the next page.</p> <p>22 Q Tell -- tell me how it works here.</p>	<p>1 A I think that's the number.</p> <p>2 Q I'm sorry?</p> <p>3 A I think that's the number.</p> <p>4 Q How -- when -- when you were doing</p> <p>5 planning for this joint venture that was formed,</p> <p>6 were you doing formal strategic planning</p> <p>7 type-documents, annual strategic plan?</p> <p>8 A When we were doing this?</p> <p>9 Q Yes. In other words --</p> <p>10 A You have to -- well, repeat the</p> <p>11 question, please.</p> <p>12 Q Sure. As President of ZF Meritor, did</p> <p>13 you prepare or authorize to have prepared under</p> <p>14 your direction a formal strategic plan for the</p> <p>15 business?</p> <p>16 A Yes.</p> <p>17 Q Did you do it every year?</p> <p>18 A Yes.</p> <p>19 Q Okay. Was it an annual plan, or did you</p> <p>20 do a plan looking three years in the future?</p> <p>21 A We always did an annual plan, plus a</p> <p>22 five-year projection.</p>

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<p>1 Q Did you do 10-, 15-, 20-year 2 projections? 3 A No. 4 Q Why not? 5 A I don't know. We just never did. 6 Q Did you, when you were the General 7 Manager of the Rockwell/Meritor Transmission, 8 Clutch and Driveline business, did you do 10-, 9 15-, 20-year plans? 10 A No. Not in detail. 11 Q It's hard to predict that far into the 12 future? 13 A We never did anything in detail in that 14 length of period. 15 Q I take it it's hard to predict that far 16 in the future what's going to happen with any 17 business, right? 18 MS. DUNCAN HACKETT: Objection. 19 THE WITNESS: Correct. Not in the 20 detailed sense, that's correct. 21 BY MR. OSTOYICH: 22 Q So you didn't do a formal, sort of here</p>	<p>1 A 699. 2 Q Okay. So these are the planning that 3 went into explaining why the joint venture would 4 make sense for Meritor, I take it? 5 A Yes. 6 Q On 699, tell me a little bit about what 7 I'm looking at here. Impact on Meritor, I take it 8 that's what Meritor would earn from the joint 9 venture over the next 5 years? That was the 10 expectation? 11 MS. DUNCAN HACKETT: Objection. 12 THE WITNESS: I don't know. I didn't 13 prepare this document. I would have to just read 14 the same things that you can read here. 15 BY MR. OSTOYICH: 16 Q Fair enough. Who prepared this, do you 17 know? 18 A Well, if you go back to page 697, 19 Thomas A. Madden presented it, so I would imagine 20 him and his staff prepared it. 21 Q Is Mr. Madden somebody in the Heavy 22 Vehicle Systems business?</p>
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<p>1 is our expected profit in year 10 through 15 of 2 the joint venture? 3 A No. 4 Q I take it you expected there to be some 5 ramp time, though, that the joint venture wouldn't 6 turn around and be immediately profitable, or did 7 you expect -- 8 A Excuse me? 9 Q Did you expect the joint venture to be 10 immediately profitable, or did you expect there to 11 be a certain period of time, a couple of years to 12 get the joint venture up and running? 13 A I would imagine there's some models 14 here. 15 Q Are you referring to something specific 16 in the document, or you mean that somewhere at one 17 point there were models? 18 A At the end of this document is 19 financials that were presented. 20 Q Okay. Where are you looking? 21 A 698. 22 Q Okay.</p>	<p>1 A He was the Vice President of -- I don't 2 know his exact title, but he was the head 3 financial person for Meritor. 4 Q The chief financial officer? 5 A Chief financial officer of some kind. 6 Q Okay. You didn't have any direct 7 involvement in preparing these tables on 698? 8 A I personally had no direct involvement 9 in this. Whether -- he probably dealt with the 10 financial people that were involved in the due 11 diligence, but I don't -- I had no direct 12 involvement in this. 13 Q Fair enough. I'm going to mark as the 14 next exhibit -- we've got the change the tape, so 15 why don't we take a break now. 16 THE VIDEOGRAPHER: Going off the record. 17 This is the end of tape 2. The time is 11:23. 18 (A break was taken.) 19 THE VIDEOGRAPHER: Back on record. This 20 is the Tape No. 3. The time is 11:35. 21 BY MR. OSTOYICH: 22 Q All right. Mr. Martello, welcome back.</p>

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<p>1 Anything you want to change from your testimony so far?</p> <p>2</p> <p>3 A No, sir.</p> <p>4 Q Okay. We're going to mark as Exhibit 7 to your deposition a ZF Meritor presentation that came from your files. It's got a stamp on it from the lawyers, ARM 012524 to 38. And I'll ask you to take a look at that.</p> <p>5 (Martello Deposition Exhibit No. 7 was marked for identification.)</p> <p>6 BY MR. OSTOYICH:</p> <p>7 Q It should look familiar.</p> <p>8 Mr. Martello, you've had a chance to look at this?</p> <p>9 A Yes.</p> <p>10 Q Okay. You said you know what this is. What is it?</p> <p>11 A It's a presentation I gave to people in the Laurinburg plant, and people that would be part of the joint venture.</p> <p>12 Q And I take it it's dated on the second page in the upper right-hand corner, it says</p>	<p>1 on "What happens to me as an employee of this business? Where do I go? Who employees me?" And all of that stuff, right?</p> <p>2 A I believe that's what this presentation was.</p> <p>3 Q Gotcha, okay.</p> <p>4 So if we look through it, some of it should look very similar to what we just saw, right, so you've got on the first page-- second page of the document you've got this history page which you put together, right?</p> <p>5 A Uh-huh.</p> <p>6 Q And again it says -- it chronicles the company entered the transmission business in 1987, the product line was limited to 9-, 10-, 13-speeds, right --</p> <p>7 A Uh-huh.</p> <p>8 Q Again, for the record, Mr. Martello, you've got to say it out loud.</p> <p>9 A Yes, sir.</p> <p>10 Q Okay. The product design you're telling me was purchased from Nissan, right?</p>
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<p>1 June 9th, 1999 on all the subsequent page.</p> <p>2 I that it this is a document that you prepared in the ordinary course, and presented it to people at the Laurinburg plant in June of 1999, right?</p> <p>3 A I believe so, yes.</p> <p>4 Q Who did you present it to?</p> <p>5 A I believe it was one that I prepared to inform the people at the Laurinburg plant, plus people that worked for me in Troy that would be part of the joint venture as to what we were doing.</p> <p>6 Q So this --</p> <p>7 A The reason I say that is page 13 states, "What Happens to Me."</p> <p>8 Q So this a presentation you made to people who were employed at that time in the Transmission, Clutch and Driveline business of Meritor, but you're saying to these people, we're forming a joint venture, we'll be put into a separate company, here's an explanation of what the joint venture is. And then you have a slide</p>	<p>1 A Yes.</p> <p>2 Q The limited product line the company had was aimed at the major fleet's linehaul business, right?</p> <p>3 A Correct.</p> <p>4 Q We've got the initial plan, the initial results, right?</p> <p>5 A Correct.</p> <p>6 Q Again, same information you already provided to Mr. Mulchandani, and he provided it to the Board, right?</p> <p>7 A Correct.</p> <p>8 Q You've got the Meritor results realized, and you're telling the employees these are the results we haven't realized, right?</p> <p>9 A Yes.</p> <p>10 Q Same results: "The company hasn't achieved market penetration expectations, products plagued by warranty issues," right?</p> <p>11 A That's what it says.</p> <p>12 Q "Full product line coverage not available to the OEMs," right?</p>

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<p>1 A Correct.</p> <p>2 Q In other words, you don't have the</p> <p>3 multispeeds and the LLs, right?</p> <p>4 A Partly, yes.</p> <p>5 Q "Eaton determined not to lose market</p> <p>6 share, and Eaton continues technology</p> <p>7 superiority," right?</p> <p>8 A Correct.</p> <p>9 Q Then on the next page we've got the</p> <p>10 current obstacles the company is facing, the</p> <p>11 transmission and clutch business is facing at the</p> <p>12 time, right?</p> <p>13 A Correct.</p> <p>14 Q Same obstacles we saw in your</p> <p>15 presentation to Mr. Mulchandani: "The OEMs'</p> <p>16 reluctance to provide standard position without a</p> <p>17 full product line," right?</p> <p>18 A Correct.</p> <p>19 Q "Lack of resources to compete in</p> <p>20 automation technology and develop new products,"</p> <p>21 right?</p> <p>22 A Correct.</p>	<p>1 informed you that the 6-speed transmission from</p> <p>2 TTC/Spicer was too expensive, right?</p> <p>3 A Correct.</p> <p>4 Q You looked at internally growing and</p> <p>5 developing transmissions, but you lacked the</p> <p>6 resources and the timing to do it in a -- in a</p> <p>7 quick manner, right?</p> <p>8 A Correct.</p> <p>9 Q You looked at an agreement with Daimler</p> <p>10 Benz, and you looked at a joint venture in North</p> <p>11 America with ZF, right?</p> <p>12 A Correct.</p> <p>13 Q You've got on the next line, "What were</p> <p>14 Meritor's business objectives?" I take it you're</p> <p>15 telling the employees you want to have a full</p> <p>16 transmission product line, right?</p> <p>17 A Correct.</p> <p>18 Q You want to obtain electronic shift</p> <p>19 technology, which is the automated mechanical</p> <p>20 technology, correct?</p> <p>21 A Correct.</p> <p>22 Q You want to have a partner who can</p>
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<p>1 Q You've got -- on the next page, you've</p> <p>2 got the same alternatives. You're explaining to</p> <p>3 the employees we thought about other options, we</p> <p>4 looked at purchasing the Mack transmission line,</p> <p>5 right?</p> <p>6 A Correct.</p> <p>7 Q But Mack decided to retain their</p> <p>8 transmission business, right?</p> <p>9 A Correct.</p> <p>10 Q You looked at the marketing agreement</p> <p>11 with Spicer/TTC for the 6-speed medium-duty</p> <p>12 transmission, but Freightliner didn't want to buy</p> <p>13 it, it was too expensive, right?</p> <p>14 MS. DUNCAN HACKETT: Objection.</p> <p>15 THE WITNESS: It's not exactly what it</p> <p>16 says, but --</p> <p>17 BY MR. OSTOYICH:</p> <p>18 Q Okay. It says you lost the Freightliner</p> <p>19 medium-duty business due to cost, right?</p> <p>20 A And lack of fully complementary product</p> <p>21 line, yes.</p> <p>22 Q And part of that is Freightliner</p>	<p>1 provide future product technology support?</p> <p>2 A Correct.</p> <p>3 Q You want to get a worldwide reputation</p> <p>4 in transmissions?</p> <p>5 A Correct.</p> <p>6 Q And partner with someone who can help</p> <p>7 battle Eaton, Dana and Daimler Powertrain</p> <p>8 worldwide?</p> <p>9 A Yes.</p> <p>10 Q By the way, when you're making this</p> <p>11 presentation, how many employees are in</p> <p>12 Laurinburg?</p> <p>13 A Again, I'll give you --</p> <p>14 Q Ballpark?</p> <p>15 A This is more than 50, less than 500.</p> <p>16 Q Fair. What I'm trying to get a sense of</p> <p>17 is are you in front of a room full of dozens of</p> <p>18 people, or was this in a small group setting.</p> <p>19 A This, more than likely, is in a large</p> <p>20 group setting.</p> <p>21 Q So effectively, this is your</p> <p>22 announcement to all the employees in the</p>

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<p style="text-align: right;">Page 138</p> <p>1 transmission and clutch business that you're</p> <p>2 ultimately responsible for, and you're telling</p> <p>3 them in a group setting what's going on with the</p> <p>4 creation of the joint venture?</p> <p>5 A This is -- I believe this was because we</p> <p>6 were going to start having people from ZF in the</p> <p>7 plant to do more due diligence and more work, and</p> <p>8 we wanted them to know why the people were there.</p> <p>9 Q And so you had a big meeting with</p> <p>10 effectively as many of the employees who were in</p> <p>11 the Laurinburg plant as were available to do it</p> <p>12 that day?</p> <p>13 A Correct.</p> <p>14 Q And it was dozens of people?</p> <p>15 A Correct.</p> <p>16 Q It's got toward the back, then, you've</p> <p>17 got some product plans and timing issues, and I</p> <p>18 want to take a look at that. So on page 11 of</p> <p>19 your presentation in June of '99, you've got</p> <p>20 "Transmission Product Plans, class 6 through 8."</p> <p>21 Do you see that? Right?</p> <p>22 A Yes. I didn't know where you saw the</p>	<p style="text-align: right;">Page 140</p> <p>1 when that transition occurred?</p> <p>2 A No, not off the top of my head.</p> <p>3 Q Fair enough.</p> <p>4 A It's -- it started a little before the</p> <p>5 joint venture and ended a little -- ended within a</p> <p>6 year after the joint venture started.</p> <p>7 Q The next page, then, you've got your</p> <p>8 "Transmission Class 8 Product Plan Timing."</p> <p>9 If you'll turn to the next page. So</p> <p>10 you've got a table here which has your plans for</p> <p>11 when you're going to roll out some -- some new</p> <p>12 products, right?</p> <p>13 A Yes.</p> <p>14 Q And it looks to me like, although the</p> <p>15 joint venture is going to be formed in mid '99,</p> <p>16 that these new products for the most part aren't</p> <p>17 going to be available to commercialize for about a</p> <p>18 year, that they're going to be -- initially</p> <p>19 launched some of them in the fall of 2000,</p> <p>20 spring/fall of 2000, and so forth, and then fully</p> <p>21 launched in 2001, effectively?</p> <p>22 A True.</p>
<p style="text-align: right;">Page 139</p> <p>1 words "6 through 8," but now I see it.</p> <p>2 Q It's up at the top in the title.</p> <p>3 A You're correct.</p> <p>4 Q And the 6-speed, which is in the</p> <p>5 left-hand column, I take it that's -- that's the</p> <p>6 ZF manual or automated mechanical product that</p> <p>7 would be for a class 6 or 7 application,</p> <p>8 typically?</p> <p>9 A That's correct.</p> <p>10 Q Okay. And then you've got listed down</p> <p>11 some the 9 and the 10s, which were already</p> <p>12 existing Meritor manual products, right?</p> <p>13 A That's correct.</p> <p>14 Q What is the MO9 series? Is that the F</p> <p>15 series, or is that the G series, do you remember,</p> <p>16 MO9 and MO10?</p> <p>17 A No. The terms F and G just followed</p> <p>18 when we made changes to them. So in June of '99,</p> <p>19 I would imagine that's an F, with maybe some of</p> <p>20 the G changes in it, but certainly not all of</p> <p>21 them.</p> <p>22 Q Okay. But you don't remember exactly</p>	<p style="text-align: right;">Page 141</p> <p>1 Q Okay. Why -- why is that? Is that just</p> <p>2 the lead time it takes to get some of these</p> <p>3 transmissions from the 12-speed ASTronic and the</p> <p>4 16-speed ASTronic from Germany and do the testing</p> <p>5 necessary in the North American market, and bring</p> <p>6 them here and test them here and all of that?</p> <p>7 MS. DUNCAN HACKETT: Objection.</p> <p>8 THE WITNESS: The rationale would be</p> <p>9 different depending upon which one you looked at.</p> <p>10 BY MR. OSTOYICH:</p> <p>11 Q Give me an example.</p> <p>12 A If you want specifically for the</p> <p>13 ASTronic, the ASTronic was a automated 12-speed</p> <p>14 for the European truck. There was changes and</p> <p>15 additions to it that had to be done to make it</p> <p>16 comparable for a North American truck.</p> <p>17 So that was lead times to do that</p> <p>18 engineering, get that tested, get, you know, the</p> <p>19 tooling and everything for those particular parts</p> <p>20 and to test it and get it to market.</p> <p>21 Q And just so we're clear on the record,</p> <p>22 so that's the 12-speed and the 16-speed ASTronic,</p>

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<p style="text-align: right;">Page 142</p> <p>1 which becomes the FreedomLine. We read that.</p> <p>2 A Correct. You see ASTronic in Europe.</p> <p>3 Q Is it A-S Tronic, or ASTronic?</p> <p>4 A ASTronic I guess is what it is.</p> <p>5 Q And I take it so that it's not -- you</p> <p>6 can't buy it off the shelf when you form the joint</p> <p>7 venture and just start selling it in North</p> <p>8 America. It's got to be retooled to work with</p> <p>9 North American driving conditions, in effect?</p> <p>10 A It has to have some additions. For</p> <p>11 example, Europe uses a 24-volt battery, we use a</p> <p>12 12-volt battery, so there's -- it had to have a</p> <p>13 voltage converter put on it that worked with it,</p> <p>14 so that was one of the four or five additions that</p> <p>15 had to be made to it.</p> <p>16 Q And I take it so those would have to be</p> <p>17 made after the formation of the joint venture;</p> <p>18 that takes a certain amount of time to design</p> <p>19 those changes?</p> <p>20 A Correct.</p> <p>21 Q And then they have to be tested in some</p> <p>22 sense?</p>	<p style="text-align: right;">Page 144</p> <p>1 problem that you weren't -- had knowledge of when</p> <p>2 you launched it, and make some changes to those if</p> <p>3 you had to.</p> <p>4 Q And I take it that's a normal process</p> <p>5 that you go through whenever you roll out a new</p> <p>6 product?</p> <p>7 A That's a normal process.</p> <p>8 Q Is that about the right time frame, it</p> <p>9 typically takes about six months or so where</p> <p>10 you're testing it in the field to see?</p> <p>11 A Well, in this particular case, we</p> <p>12 were -- we knew the reliability of the ASTronic.</p> <p>13 So the main box, we had a lot of data from Europe</p> <p>14 that it was sound, so you're only testing the</p> <p>15 changes plus its fit into a North American truck.</p> <p>16 So it might be less than some of the other things</p> <p>17 that you might do.</p> <p>18 Q I take it, Mr. Martello, that</p> <p>19 effectively in the middle of 1999, you're forming</p> <p>20 the joint venture, but the way I'm reading it,</p> <p>21 then, the ASTronic is not going to be available,</p> <p>22 even for initial testing in the U.S., until about</p>
<p style="text-align: right;">Page 143</p> <p>1 A Correct.</p> <p>2 Q How long is the testing period,</p> <p>3 typically?</p> <p>4 A Depends on what you're testing. If</p> <p>5 you're testing something simple, it could be a</p> <p>6 matter of weeks. If you're testing something big,</p> <p>7 it could be years, so --</p> <p>8 Q And I take it between the changes that</p> <p>9 had to be made to the ASTronic and then the</p> <p>10 testing period was in effect, it was going to take</p> <p>11 about a year before you would be ready to</p> <p>12 initially launch the product in the fall of 2000?</p> <p>13 A Yeah, that's what we felt, yes.</p> <p>14 Q What's -- what's an initial launch</p> <p>15 versus a full production launch?</p> <p>16 A It was a period in which we wanted to</p> <p>17 put a number of products in the field and have</p> <p>18 them sort of tested.</p> <p>19 So this launch, initial launch to</p> <p>20 production, was a period of time where you would</p> <p>21 what we call seed the market and let the</p> <p>22 product -- determine if the product had any</p>	<p style="text-align: right;">Page 145</p> <p>1 a year --</p> <p>2 A About a year afterwards, yes.</p> <p>3 Q -- afterwards, right?</p> <p>4 A Correct.</p> <p>5 Q And then it won't be available for full</p> <p>6 testing almost for two full years after the</p> <p>7 formation of the joint venture?</p> <p>8 A Full production, yes.</p> <p>9 Q Spring of 2001?</p> <p>10 A Year and a half.</p> <p>11 Q And then you've got some of the other</p> <p>12 products. What's the 10-speed high-torque Model 3</p> <p>13 that you were at this point planning to launch in</p> <p>14 May of 2000?</p> <p>15 A It was our belief that engines would</p> <p>16 continue to raise in torque value, and one of the</p> <p>17 things we wanted to do was have a 10-speed that</p> <p>18 could handle the higher torques and really beat</p> <p>19 our competition to the market, so we had already</p> <p>20 had it designed and tested internally, waiting --</p> <p>21 waiting for the change in engines to happen that</p> <p>22 never happened, so --</p>

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<p style="text-align: right;">Page 146</p> <p>1 Q Okay. Spell that out for me. So the</p> <p>2 change in engines never happened. What do you</p> <p>3 mean?</p> <p>4 A The engines' changes to the higher</p> <p>5 torques never happened in my time with the</p> <p>6 business.</p> <p>7 Q Okay. So in other words, you didn't</p> <p>8 need the 10-speed high-torque Model 3 because the</p> <p>9 engines weren't increased in power?</p> <p>10 A Correct. It never came into existence</p> <p>11 when we thought it would.</p> <p>12 Q Fair enough.</p> <p>13 A The engine companies had other things</p> <p>14 that they had to do because of regulations.</p> <p>15 Q Environmental regulations and so forth?</p> <p>16 A Yes.</p> <p>17 Q So this 10-speed high-torque Model 3</p> <p>18 product was not launched in May of 2000 and in</p> <p>19 full production in October of 2000, I take it?</p> <p>20 A No.</p> <p>21 Q Okay. What about below that, the fourth</p> <p>22 bullet point. It says the 10-speed high-torque</p>	<p style="text-align: right;">Page 148</p> <p>1 offering previously?</p> <p>2 MS. DUNCAN HACKETT: Objection.</p> <p>3 BY MR. OSTOYICH:</p> <p>4 Q Okay. The next page, you've got the</p> <p>5 slide on "What Happens to Me," and I take it this</p> <p>6 is sort of your assurance to the employees who had</p> <p>7 assembled in the Laurinburg plant that, yes, you</p> <p>8 will remain employees, we're keeping the business</p> <p>9 as is, but we're adding in the ZF/AG technology.</p> <p>10 Is that fair?</p> <p>11 A Yes, but it says they would remain a</p> <p>12 Meritor employee for one year, and then they would</p> <p>13 fold into the joint venture. It was a matter of</p> <p>14 getting everything done structurewise to do that,</p> <p>15 so --</p> <p>16 Q And I take it that some of that is just</p> <p>17 we want certain employees who have overhead</p> <p>18 functions to be part of the joint venture or</p> <p>19 remain employees of Meritor, things of that</p> <p>20 nature?</p> <p>21 A Everybody, including me, became an</p> <p>22 employee of ZF Meritor. So from a person on the</p>
<p style="text-align: right;">Page 147</p> <p>1 with torque management.</p> <p>2 Is that the same product with torque</p> <p>3 management, or is that something different?</p> <p>4 A Same product.</p> <p>5 Q And I take it, because the engine change</p> <p>6 never occurred, you didn't need this product,</p> <p>7 commercially launch this product also?</p> <p>8 A Correct.</p> <p>9 Q Okay. And then you've got dates for the</p> <p>10 LL for initial launch in October of 2001, full</p> <p>11 production in 2002, so this would be in the third</p> <p>12 year of the joint venture, right?</p> <p>13 A Correct.</p> <p>14 Q And so forth. And you've got some</p> <p>15 subsequent products being planned for launch on</p> <p>16 subsequent dates in January 2002, April 2002, and</p> <p>17 January 2003?</p> <p>18 A Correct.</p> <p>19 Q I take it from when the joint venture</p> <p>20 was formed in mid '99, then, there were no</p> <p>21 products immediately available to U.S. customers</p> <p>22 that were different from what you had been</p>	<p style="text-align: right;">Page 149</p> <p>1 floor to myself, we all became ZF Meritor</p> <p>2 employees. But there was a lot of work to do to</p> <p>3 structure it so that we did not lose our years of</p> <p>4 service with -- you know, there was a lot of work</p> <p>5 to do on the employee side, and that's why we</p> <p>6 figured it would take a one-year period to do</p> <p>7 that.</p> <p>8 Q Fair enough. So you're basically saying</p> <p>9 you'll have your job, everything will be the same</p> <p>10 for a year, and in the meantime we're going to</p> <p>11 evaluate how to structure the business going</p> <p>12 forward; is that fair?</p> <p>13 A That's correct.</p> <p>14 Q You've got your class 8 goal, which</p> <p>15 you're communicating to the employees on the next</p> <p>16 page of growing the company's share of the class 8</p> <p>17 transmission business, right?</p> <p>18 A Correct.</p> <p>19 Q And then on the next page you've got the</p> <p>20 projected sales volume year by year by product?</p> <p>21 A Correct.</p> <p>22 Q And make sure I'm reading this right.</p>

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<p>1 So the projection for -- your fiscal year 2000,</p> <p>2 was it the same then as Meritor's, would have been</p> <p>3 starting in the fall of '99 through the fall of</p> <p>4 2000?</p> <p>5 A Excuse me?</p> <p>6 Q Looking at the --</p> <p>7 A Year 2000 --</p> <p>8 Q So that's a fiscal year that starts in</p> <p>9 the fall of '99?</p> <p>10 A Yes, it would be fiscal year, correct.</p> <p>11 Q So in other words, in the calendar year</p> <p>12 from the fall of '99 to the fall of 2000, you're</p> <p>13 predicting sales volume of 9- and 10-speed</p> <p>14 manuals, for example, of 45,717?</p> <p>15 A Correct.</p> <p>16 Q Okay. And you're predicting that over</p> <p>17 the next four or five years of the joint venture,</p> <p>18 the 9- and 10-speed manuals that Meritor offered</p> <p>19 would decline in sales volume from 45,700 to about</p> <p>20 28,600, right?</p> <p>21 A Yes, the manuals would go down as the</p> <p>22 automated manuals took their place.</p>	<p>1 Q -- that goes from 5,000 to 10,000,</p> <p>2 right?</p> <p>3 A Correct.</p> <p>4 Q And the SmartShift goes from 4500 to</p> <p>5 77 -- so about 8,000 over that five-year period?</p> <p>6 A Correct.</p> <p>7 Q So it looks like about, of the 35,000</p> <p>8 unit increase in sales, you're projecting</p> <p>9 somewhere around 35,000 or so increase in</p> <p>10 automated mechanical products?</p> <p>11 A Correct.</p> <p>12 Q And a decline in the manual products?</p> <p>13 A Correct.</p> <p>14 Q And just so I'm clear, there was no plan</p> <p>15 or strategic planning process for the period after</p> <p>16 2004? This was as far out as you did it at this</p> <p>17 time?</p> <p>18 A At this time, we did -- we always did</p> <p>19 five-year detailed projections. One year was</p> <p>20 extreme detail, other four years was detailed but</p> <p>21 not as much detail.</p> <p>22 Q Fair enough. And you didn't do the</p>
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<p>1 Q Okay. And by "automated manuals," you</p> <p>2 mean the 12-speed ASTronic and the 16-speed</p> <p>3 ASTronic?</p> <p>4 A Plus SureShift and SmartShift.</p> <p>5 Q And collectively, then, it looks like</p> <p>6 down at the bottom you've got the totals, so</p> <p>7 you're predicting an overall growth in</p> <p>8 transmission sales during that five-year period of</p> <p>9 about 35,000 or so, 58,900 to 94,000, right?</p> <p>10 A Yes.</p> <p>11 Q And the way I'm reading it, virtually</p> <p>12 all of that growth is from the automated</p> <p>13 mechanical products, right?</p> <p>14 A The large majority, yes.</p> <p>15 Q In other words, the FreedomLine, which</p> <p>16 is the 12-speed and 16-speed ASTronic, goes from</p> <p>17 zero to about 31,000 during that period in your</p> <p>18 plan?</p> <p>19 A Oh, yes, okay. Yes.</p> <p>20 Q And then the SureShift, which is an</p> <p>21 automated mechanical product --</p> <p>22 A Correct.</p>	<p>1 planning, detailed planning of any kind for years</p> <p>2 5 through 10 or 10 through 15 and so on?</p> <p>3 A No.</p> <p>4 Q I asked you this morning about some of</p> <p>5 the Board presentations, and I think you said that</p> <p>6 you were responsible, as the President of the</p> <p>7 ZF Meritor joint venture, for presenting quarterly</p> <p>8 reports to the Board of Directors on the business;</p> <p>9 is that fair?</p> <p>10 A Yes.</p> <p>11 Q Okay. I've got a series of those, and I</p> <p>12 want to make sure I've got you're -- what you were</p> <p>13 presenting, so I'm going to try to run through</p> <p>14 some of those.</p> <p>15 The first one, which we're going to mark</p> <p>16 as Exhibit 8 to your deposition, Mr. Martello, is</p> <p>17 the minutes of a ZF Meritor LLC Board of Directors</p> <p>18 meeting, July 13th, 2000. Again, produced by your</p> <p>19 lawyers to me out of the company's file, it's</p> <p>20 ZFMA0033226 through 35.</p> <p>21 And it says there was a Board of</p> <p>22 Directors meeting held at the offices of</p>

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<p>1 ZF Industries in Gainesville, Georgia, commencing 2 at 8:00 a.m. on Thursday, July 13th, 2000. It 3 says the following members of the Board were 4 present in person, and also present in person at 5 the meeting at the request of the directors was, 6 among others, Richard Martello, President of the 7 company. 8 So I'll ask you to take a look at that. 9 (Martello Deposition Exhibit No. 8 was 10 marked for identification.) 11 THE WITNESS: Okay. 12 BY MR. OSTOYICH: 13 Q I take it, Mr. Martello, that you in 14 fact did attend a Board meeting of ZF Meritor LLC 15 in July of 2000 at -- 16 A Excuse me? 17 Q You did in fact attend a Board of 18 Directors meeting -- 19 A Yes. 20 Q -- of ZF Meritor LLC in July of 2000? 21 A Yes. 22 Q Okay. So it says you attended as</p>	<p>1 of ZF Meritor that a full line of automated 2 products be released at every OEM, right? 3 A That's what it says. I think the words 4 are a little -- I don't think the sentence was 5 written correctly in that -- it would be nice to 6 say I recommended it be released at every OEM, but 7 that's not going to make it happen. 8 Q Sure. But in other words, you made a 9 presentation at this July 200 ZF Meritor Board 10 meeting where you said, in effect, we should try 11 and get a full line of automated products released 12 at every OEM, right? 13 A Correct. 14 Q And we should try and develop a full 15 class 8 product line -- 16 A Correct. 17 Q -- as a business, as a company going 18 forward, right? 19 A Correct. 20 Q Now, just so I'm clear on the record, 21 what did you mean by you should try to get a full 22 line of automated products released at every OEM?</p>
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<p>1 president of the company. Mr. Mulchandani made 2 some opening remarks, and then it's got various 3 presentations that were presented at that Board 4 meeting by you and others, right? 5 A Correct. 6 Q Okay. And one of the things, if I look 7 through it, it's got presentations on the 2001 to 8 2005 business plan, which I take it is that 9 five-year strategic plan that you mentioned 10 earlier? 11 A I would believe that's it. 12 Q Okay. That's starting on -- the last 13 two digits there are 29. 14 A Yes. 15 Q It says you made a presentation on parts 16 of that, and then on the next page, there was a 17 presentation by Mr. Martello on environmental 18 analysis and competitive analysis, right? 19 A Uh-huh. 20 Q If you look at the carryover from 5 21 to 6, I guess as part of your presentation on 22 competitive analysis, you recommended to the Board</p>	<p>1 In other words, is that just the 12- and 16-speed 2 FreedomLine, or is it something else? 3 A It included the 12- and 16-speed. 4 Q Okay. And where you're recommending 5 that you try and get other automated products 6 released at every OEM? 7 A At the time, we only had -- it was same 8 thing I've said before. You can refer to the 9 other documents that we've talked about. 10 I always believed that because of the 11 threat that Eaton had on pricing of products that 12 we didn't have, it was -- always put us in a 13 position that we didn't want to be in when we 14 dealt with the OEMs. 15 Q Again, so I'm clear on the record, so 16 you're recommending to the Board the same issue we 17 saw back when we were looking at the Mack purchase 18 five or six years before this, which is we needed 19 to develop a full line of products, full line of 20 transmission products, the LLs, the 13-speeds, the 21 15-speeds, the 18s and so forth, right? 22 A We needed a line of products. I never</p>

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<p style="text-align: right;">Page 158</p> <p>1 believed we needed exactly everything you said, 2 but -- 3 Q Okay. 4 A -- but, yes, we needed a fuller line of 5 products. 6 Q Fair enough. You have customers out 7 there, big truck customers, that need 8 transmissions that you're not offering, and you're 9 just saying to the Board, again, as I've been 10 saying when I was back at Meritor, we need to 11 develop those or form a partnership or somehow 12 create some of the transmissions we don't 13 currently have for their customers, fair? 14 A Again, as I said in the Mack 15 presentation, there was a constant view by 16 everyone that Eaton would threaten market pricing 17 to OEMs that took as a standard on products that 18 we didn't have. 19 Q What do you mean there was a constant 20 view by everyone? 21 A Well, within -- within the people of 22 ArvinMeritor, it was discussed more than once</p>	<p style="text-align: right;">Page 160</p> <p>1 particularly said that? No, I was never in a 2 meeting with Eaton personnel that said that. 3 Q And the only Mack person, one person at 4 Mack, Hans -- what's his name? 5 A Hans Walter. 6 Q Hans Walter. 7 A I remember that, and I remember Larry 8 Moore at Volvo telling me that. That's the two I 9 can remember other than third and fourth hand 10 discussion with sales guys and people within 11 ArvinMeritor. 12 Q All right. Now, at this point, you're 13 telling the Board you have customers out there who 14 are buying things that you're not making, right? 15 A Correct. 16 Q LLs, high-torque 13-speeds, 18-speeds, 17 right? 18 A Correct. 19 Q You're saying we need to make those or 20 get them somehow so we can offer those products 21 because they want to buy those, right? 22 A Correct.</p>
<p style="text-align: right;">Page 159</p> <p>1 among Charlie Allen, Dennis Kline, myself, and 2 Dennis's salespeople, that the OEMs were afraid of 3 retaliatory pricing from Eaton on the products 4 that we didn't have. 5 Q Sure, I understand. So internally you 6 had a lot of discussions about the OEMs' concern, 7 right? 8 A Correct. 9 Q And, again, the only conversation you 10 ever had was one guy from Mack who referenced an 11 unidentified person at Eaton, right? 12 MS. DUNCAN HACKETT: Objection. 13 BY MR. OSTOYICH: 14 Q Right? 15 A I don't understand -- you mean the 16 only -- 17 Q You have no firsthand knowledge of any 18 Eaton threats about pricing of any products, 19 right? We've already talked about that. 20 A "Firsthand" being -- 21 Q You heard it. 22 A -- that I was in the meeting where Eaton</p>	<p style="text-align: right;">Page 161</p> <p>1 Q And we're not going to be able to keep 2 and maintain standard position at the OEMs unless 3 we actually offer the products, all the products 4 they need to purchase for their business, right? 5 MS. DUNCAN HACKETT: Objection. 6 THE WITNESS: It would be difficult to 7 do without all the products, yes. 8 BY MR. OSTOYICH: 9 Q Let's go back in the presentation. 10 There's a -- on that page we looked at 11 before with the 2001 to 2005 business plan that 12 you presented to the Board at this July 13th, 2000 13 Board meeting, there's a section there that says, 14 "A. Market Share Analysis." 15 A Correct. 16 Q It says, "Mr. Martello discussed, 17 initially, the variance between projected market 18 share penetration (expected to increase from 16.1% 19 to 21.7%) and the actual results (decrease from 20 16.1% to 13%)." Do you see that? 21 A Uh-huh. 22 Q And I take it that reflects,</p>

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<p>1 Mr. Martello, you presented to the Board in July</p> <p>2 of 2000 that the company had expected in the first</p> <p>3 year of the joint venture to increase its market</p> <p>4 share from 16 percent of the class 8 transmissions</p> <p>5 to about 22 percent of the class 8 transmissions,</p> <p>6 right?</p> <p>7 A I believe it's total market. It could</p> <p>8 just be the linehaul, but I believe it's total</p> <p>9 market, yes.</p> <p>10 Q But the actual results in that first 12</p> <p>11 months or so of the joint venture was that your</p> <p>12 share of the total class 8 transmissions declined</p> <p>13 from about 16 percent to 13 percent, right?</p> <p>14 A Yes.</p> <p>15 Q And then you listed for the Board the</p> <p>16 factors that contributed to that situation, that</p> <p>17 decline in share, right?</p> <p>18 A Yes.</p> <p>19 Q Poor product quality image, right?</p> <p>20 A Yes.</p> <p>21 Q And what did you tell the Board about</p> <p>22 poor product quality image? What did you mean by</p>	<p>1 contributing to the decline in the company's</p> <p>2 market share in its first year of operation was</p> <p>3 turnover in the company's sales organization.</p> <p>4 Do you see that?</p> <p>5 A Yes.</p> <p>6 Q What did you mean by "turnover in the</p> <p>7 company's sales organization"?</p> <p>8 A I believe it was a period of time where</p> <p>9 we lost a lot of people in the sales organization</p> <p>10 that left and were replaced. They were going</p> <p>11 through a changeover in the sales organization.</p> <p>12 Q Okay. Was that a reference to the joint</p> <p>13 venture sales organization, or was that the</p> <p>14 ArvinMeritor North American field organization?</p> <p>15 A ArvinMeritor.</p> <p>16 Q Was that coincident with the merger</p> <p>17 between Meritor and ArvinMeritor, or was that</p> <p>18 the --</p> <p>19 A It had nothing to do with the joint</p> <p>20 venture.</p> <p>21 Q Okay. Just something to do with the</p> <p>22 parent -- the shareholder, ArvinMeritor?</p>
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<p>1 that?</p> <p>2 A I don't remember exactly what, but it</p> <p>3 probably went back to the bearing issue on recall</p> <p>4 that we had.</p> <p>5 Q And then you said to the Board in</p> <p>6 July of 2000 that another factor that contributed</p> <p>7 to the decline in the joint venture's share of</p> <p>8 class 8 transmission sales was a decrease in Ryder</p> <p>9 business.</p> <p>10 Do you see that?</p> <p>11 A Correct.</p> <p>12 Q And that's the decrease we talked about</p> <p>13 before, that after the bearing issue, at some</p> <p>14 point, your business with Ryder decreased? They</p> <p>15 started purchasing less from the company?</p> <p>16 A Yeah. I think in this particular</p> <p>17 instance, but I'm not positive, it was just a down</p> <p>18 year for Ryder purchases of trucks in general, and</p> <p>19 since Ryder was a major -- major part for us. But</p> <p>20 I wouldn't swear to that, but it does say decrease</p> <p>21 in Ryder business.</p> <p>22 Q Then the third factor you told the Board</p>	<p>1 A Yes, just something that happened,</p> <p>2 that's all.</p> <p>3 Q Then the fourth factor that you told the</p> <p>4 Board contributed to the decline in the company's</p> <p>5 share of class 8 transmissions was an increase in</p> <p>6 sales of Eaton auto shift, right?</p> <p>7 A Correct.</p> <p>8 Q So in other words, it's a competitive</p> <p>9 product, and they've taken some business from us,</p> <p>10 right?</p> <p>11 MS. DUNCAN HACKETT: Objection.</p> <p>12 THE WITNESS: It was just a period of</p> <p>13 where they were increasing sales of auto shift.</p> <p>14 BY MR. OSTOYICH:</p> <p>15 Q And then the fifth factor that you told</p> <p>16 the board contributed to the company's decline in</p> <p>17 transmission share was the push towards 13-speed</p> <p>18 transmissions, especially by Freightliner.</p> <p>19 What did you mean by that?</p> <p>20 A I believe because -- I believe it had a</p> <p>21 lot to do with the integration of Sterling Trucks</p> <p>22 into the Freightliner, and Sterling had a lot of</p>

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<p style="text-align: right;">Page 166</p> <p>1 13-speed business.</p> <p>2 Q Spell that out for me. So in other</p> <p>3 words, we've talked about Freightliner at this</p> <p>4 point has purchased a new truck business, the</p> <p>5 Sterling business, and they had a higher mix of</p> <p>6 13-speed transmission trucks, I take it?</p> <p>7 A Correct. Yes, that we didn't -- that we</p> <p>8 couldn't --</p> <p>9 Q Mr. Martello, you've got to speak up a</p> <p>10 little bit.</p> <p>11 A I said, yes, that's -- the Sterling</p> <p>12 business had a lot of higher-torque 13-speeds than</p> <p>13 the Freightliner normal mix of product.</p> <p>14 Q And I take it at that point, you didn't</p> <p>15 have the 13-speed offerings that</p> <p>16 Sterling/Freightliner needed?</p> <p>17 A Correct.</p> <p>18 Q All right. Then the sixth factor you</p> <p>19 told the Board contributed to the decline in the</p> <p>20 company's share from 16 percent to 13 percent of</p> <p>21 class 8 transmissions was the multiyear fleet</p> <p>22 business lost due to competitive equalization</p>	<p style="text-align: right;">Page 168</p> <p>1 Q Again, you've got to be audible,</p> <p>2 Mr. Martello.</p> <p>3 A That's correct.</p> <p>4 Q And you said your boss said why are we</p> <p>5 giving price concessions, competitive</p> <p>6 equalization, to fleets?</p> <p>7 A That's correct.</p> <p>8 Q And who was that person?</p> <p>9 A Mr. Mulchandani.</p> <p>10 Q Okay. So I take it the company in that</p> <p>11 year, the first year of the joint venture's</p> <p>12 operation, under Mr. Mulchandani's direction,</p> <p>13 decided not to pay those discounts to the fleets?</p> <p>14 MS. DUNCAN HACKETT: Objection.</p> <p>15 THE WITNESS: See, I'm not -- I don't</p> <p>16 know -- this doesn't tell me what year that this</p> <p>17 penetration drop is talking about, whether that is</p> <p>18 our fiscal '99 or our fiscal 2000. I'd have to</p> <p>19 know that in particular.</p> <p>20 But to answer -- to answer your exact</p> <p>21 question, when you say first year of the joint</p> <p>22 venture, I'm not sure whether that was the first</p>
<p style="text-align: right;">Page 167</p> <p>1 cutbacks in early 1999.</p> <p>2 What did you mean by that?</p> <p>3 A Well, I'm going to tie it in with the</p> <p>4 next sentence, which was control distribution.</p> <p>5 Q Okay.</p> <p>6 A And that was a period of time where we</p> <p>7 were selling everything we could make. Eaton was</p> <p>8 selling everything they could make, and our boss</p> <p>9 said if we're selling everything we can make, why</p> <p>10 are we giving competitive equalization to people</p> <p>11 in the marketplace.</p> <p>12 Q What's competitive equalization?</p> <p>13 A Pricing -- price reductions for people</p> <p>14 to buy product in the marketplace.</p> <p>15 Q And is that a price reduction that was</p> <p>16 provided to the OEMs or to the fleet customers?</p> <p>17 A To the fleet customers.</p> <p>18 Q I see, okay. So you were having, I</p> <p>19 guess, in that prior year of the joint venture</p> <p>20 operation, you were having a good year, you were</p> <p>21 selling out?</p> <p>22 A (Witness nodding head up and down.)</p>	<p style="text-align: right;">Page 169</p> <p>1 year of the joint venture or the last year of just</p> <p>2 ArvinMeritor.</p> <p>3 BY MR. OSTOYICH:</p> <p>4 Q Fair enough. So just so we're clear on</p> <p>5 the record, so you're telling the Board of</p> <p>6 Directors of the joint venture, our share has gone</p> <p>7 down of class 8 transmissions from 16 percent to</p> <p>8 13 percent, and factors 6 and 7 are, at some point</p> <p>9 over the last two years, we cut back on our</p> <p>10 discounts to the fleets, right?</p> <p>11 A Cut back on our discounts to the fleet</p> <p>12 because we were selling as many product as we can.</p> <p>13 Q And as a result, I guess you lost</p> <p>14 business because some fleets decided to take their</p> <p>15 business elsewhere?</p> <p>16 MS. DUNCAN HACKETT: Objection.</p> <p>17 THE WITNESS: It was lost business</p> <p>18 because we didn't have -- we didn't offer</p> <p>19 multiyear fleet business, so -- I mean, that's</p> <p>20 what it says. It says we lost business due to</p> <p>21 competitive equalization cutbacks to fleets.</p> <p>22</p>

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<p>1 BY MR. OSTOYICH:</p> <p>2 Q Right. In other words, you're telling</p> <p>3 the Board that's what --</p> <p>4 A That's one of the reasons, yes.</p> <p>5 Q -- the 6 factors we lost some share last</p> <p>6 year.</p> <p>7 A That's what it says, yes.</p> <p>8 Q What is -- are you saying the seventh --</p> <p>9 one of the reasons, the seventh reason you lost</p> <p>10 some share was control distribution.</p> <p>11 What did that mean?</p> <p>12 A Well, it was -- that was a period of</p> <p>13 time where we were producing everything we could</p> <p>14 produce, so regardless of what the market was, we</p> <p>15 could only produce a certain amount. So when you</p> <p>16 look at share of the total market, it didn't mean</p> <p>17 as much because we produced everything we could</p> <p>18 produce, anyway.</p> <p>19 Q You were selling out, in other words?</p> <p>20 A Yes, we sold out.</p> <p>21 Q But what does it mean that you lost</p> <p>22 business due to control distribution? What is</p>	<p>1 This will be Martello 9.</p> <p>2 (Martello Deposition Exhibit No. 9 was</p> <p>3 marked for identification.)</p> <p>4 BY MR. OSTOYICH:</p> <p>5 Q While you're looking at that, I'll just</p> <p>6 identify it for the record.</p> <p>7 It's on ZF Meritor -- it's got a logo at</p> <p>8 the top. It says, "Board of Directors meeting,</p> <p>9 July 13, 2000. Transmissions." Came from the</p> <p>10 company's files with the stamp on it from the</p> <p>11 lawyers ZFMA0343536 to 45.</p> <p>12 And let me know when you've had a chance</p> <p>13 to look at that.</p> <p>14 A Yes.</p> <p>15 Q Now, if you'll look at Exhibit 8, which</p> <p>16 is the minutes of the Board meeting, it says that</p> <p>17 you made some presentations on competitive</p> <p>18 analysis and so forth on page 5 down at the</p> <p>19 bottom. See where I am under the section that</p> <p>20 says "D" right there?</p> <p>21 A Yes, but this -- this is -- this is a</p> <p>22 presentation of the technology road map that</p>
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<p>1 control distribution, in other words?</p> <p>2 A We -- we only had a certain amount of</p> <p>3 trucks -- I mean, a certain amount of</p> <p>4 transmissions that we could sell to the OEMs to</p> <p>5 put in trucks. So we gave so many to</p> <p>6 Freightliner, so many to Mack, so we had to</p> <p>7 control the distribution because we couldn't give</p> <p>8 them everything they wanted.</p> <p>9 Q I gotcha. In other words, you</p> <p>10 allocated, Mack, you get so many units, and</p> <p>11 Freightliner, you get so many because we can't</p> <p>12 provide everything you want, basically?</p> <p>13 A We never used the word "allocation."</p> <p>14 Q Fair enough. But it's the same idea,</p> <p>15 right?</p> <p>16 A Sort of, yes.</p> <p>17 Q Okay. Let's mark as the next exhibit --</p> <p>18 and actually, if you could keep that one there,</p> <p>19 Mr. Martello, because it's --</p> <p>20 A Excuse me?</p> <p>21 Q Keep the July 13th, 2000 Board</p> <p>22 presentation there.</p>	<p>1 Mr. Molde made, I do believe, because the last --</p> <p>2 if you look at it, it says, "Market trends, the</p> <p>3 competitive position of Eaton, TTC, Mack, Daimler</p> <p>4 Chrysler, development of acquisitions of --</p> <p>5 Q I gotcha.</p> <p>6 A So the technology road map is something</p> <p>7 that the engineering community in ArvinMeritor</p> <p>8 did, and that's what this back part is.</p> <p>9 So I would say this is a presentation</p> <p>10 made by Dean Molde.</p> <p>11 Q Gotcha. So you were at the Board</p> <p>12 meeting, and you're saying Mr. Molde, who was the</p> <p>13 chief engineer for the joint venture --</p> <p>14 A That's correct.</p> <p>15 Q -- he presented this set of slides to</p> <p>16 the Board of Directors while you were there?</p> <p>17 A I believe that to be true.</p> <p>18 Q So I got it. So in other words, on that</p> <p>19 first page-- or the second page, Mr. Molde</p> <p>20 provided the competitive analysis of Eaton, right?</p> <p>21 A Correct.</p> <p>22 Q He said the transmission, the</p>

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<p>1 transmission class 6 through 8, they're the market</p> <p>2 leader, full product line offering, right?</p> <p>3 A Yes.</p> <p>4 Q And he told the Board they're</p> <p>5 introducing shift and clutch system automation on</p> <p>6 the entire product line, right?</p> <p>7 A That's correct.</p> <p>8 Q Told the Board that Eaton has very</p> <p>9 strong brand loyalty, right?</p> <p>10 A Correct.</p> <p>11 Q Very strong engineering and technical</p> <p>12 resources, correct?</p> <p>13 A Correct.</p> <p>14 Q That Eaton has their own electronics</p> <p>15 division?</p> <p>16 A Correct.</p> <p>17 Q That Eaton has a very aggressive patent</p> <p>18 portfolio?</p> <p>19 A Correct.</p> <p>20 Q And on the next page Mr. Molde told the</p> <p>21 Board the competitive analysis of TTC, which is</p> <p>22 the old Spicer transmission business?</p>	<p>1 A We believe this to be true, yes.</p> <p>2 Q Okay. And I take it, as part of your</p> <p>3 sales and marketing effort for the joint venture,</p> <p>4 you're considering that Daimler or Mack could use</p> <p>5 more of their own transmissions and buy fewer from</p> <p>6 any outside vendor, right?</p> <p>7 MS. DUNCAN HACKETT: Objection.</p> <p>8 THE WITNESS: We did not believe that to</p> <p>9 be true at Mack. We did believe that Daimler</p> <p>10 Chrysler wanted to get into the transmission</p> <p>11 business because we had discussions with them</p> <p>12 about it.</p> <p>13 BY MR. OSTOYICH:</p> <p>14 Q In other words, the Daimler Chrysler,</p> <p>15 just so we're clear, Daimler Chrysler, they own</p> <p>16 Freightliner, right?</p> <p>17 A That's correct.</p> <p>18 Q And Daimler Chrysler made its own</p> <p>19 transmissions and other components in Europe,</p> <p>20 right?</p> <p>21 A For European-style trucks.</p> <p>22 Q And there was -- you had a concern that</p>
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<p>1 A Correct.</p> <p>2 Q And then on the next page, the</p> <p>3 competitive analysis of Mack?</p> <p>4 A Correct.</p> <p>5 Q Mack is not selling its transmissions;</p> <p>6 they use them internally for their own truck</p> <p>7 production, right?</p> <p>8 A Correct.</p> <p>9 Q But I take it the company, the joint</p> <p>10 venture, considered Mack a competitor in the sense</p> <p>11 that you had to win their business and they had an</p> <p>12 alternate product line that they could use</p> <p>13 internally on their own, themselves?</p> <p>14 A In this particular case, being that it</p> <p>15 was done by an engineer for an engineering</p> <p>16 analysis, "competitive" would mean a product -- in</p> <p>17 the competitive design of the product more than it</p> <p>18 would mean competition in the marketplace.</p> <p>19 Q Fair enough. And I take it on the next</p> <p>20 page, Mr. Molde is telling the Board that Daimler</p> <p>21 Chrysler has competitive alternatives in-house</p> <p>22 that they could use on their own, right?</p>	<p>1 they could start making their own transmissions</p> <p>2 for North American-style trucks?</p> <p>3 A We knew that it was their desire, yes.</p> <p>4 Q So I take it, as part of your assessment</p> <p>5 of how you're going to proceed, you're factoring</p> <p>6 in, as the President of the joint venture, we've</p> <p>7 got to keep one eye on Daimler Chrysler because if</p> <p>8 we're not offering the right products at the right</p> <p>9 prices, they can start making their own products.</p> <p>10 Is that fair?</p> <p>11 MS. DUNCAN HACKETT: Objection.</p> <p>12 THE WITNESS: I don't think it had</p> <p>13 anything to do with the right products at the</p> <p>14 right prices. We just said, in this analysis,</p> <p>15 Daimler Chrysler is someone that can make</p> <p>16 transmissions and has the desire to make</p> <p>17 transmissions for North America.</p> <p>18 BY MR. OSTOYICH:</p> <p>19 Q So you considered them a potential</p> <p>20 competitor for their business because if you</p> <p>21 didn't give them an offer that they found</p> <p>22 acceptable, they could just use their own?</p>

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<p style="text-align: right;">Page 178</p> <p>1 A That's correct.</p> <p>2 Q Fair enough.</p> <p>3 It's 12:30, Mr. Martello. Do you have</p> <p>4 enough stamina for another document, or do you</p> <p>5 want to stop for lunch?</p> <p>6 A I'm not a great lunch eater, so that's</p> <p>7 up to you lunching people.</p> <p>8 Q Well, I'll tell you what, let's see if</p> <p>9 we can do --</p> <p>10 A This lady has to exercise her fingers</p> <p>11 more than --</p> <p>12 Q Let's just mark one more document, then</p> <p>13 we'll take a break after that.</p> <p>14 A Okay.</p> <p>15 Q I know you don't want to eat, but she</p> <p>16 does, and I do, and probably Jen does as well.</p> <p>17 We're going to mark as --</p> <p>18 A Can I put this away?</p> <p>19 Q Yes, you can, thanks.</p> <p>20 We'll mark as Exhibit 10 to your</p> <p>21 deposition a ZF Meritor 2001 to 2005 strategic</p> <p>22 business plan. And I'll ask you to take a look at</p>	<p style="text-align: right;">Page 180</p> <p>1 Q And I take it this is the slides that</p> <p>2 you presented to the Board in July of 2000, right?</p> <p>3 A I would say so.</p> <p>4 Q Okay. And this was prepared and</p> <p>5 presented in the ordinary course of your</p> <p>6 responsibilities as the President of the joint</p> <p>7 venture, fair?</p> <p>8 A Correct.</p> <p>9 Q The pages aren't numbered, Mr. Martello,</p> <p>10 but would the lawyer stamp at the bottom, it's got</p> <p>11 the last two digits 83, and it's probably about 5</p> <p>12 or 6 pages in, if you could take a look at that.</p> <p>13 A 83?</p> <p>14 Q 83 are the last two digits.</p> <p>15 A Yes.</p> <p>16 Q So up at the top it should say</p> <p>17 "Unfavorable Market Trends." Do you see that?</p> <p>18 A Correct.</p> <p>19 Q I take it this is a page that you</p> <p>20 prepared and presented to the Board in July of</p> <p>21 2000 on unfavorable market trends that you saw on</p> <p>22 the horizon, is that fair? Or favorable market</p>
<p style="text-align: right;">Page 179</p> <p>1 that.</p> <p>2 (Martello Deposition Exhibit No. 10 was</p> <p>3 marked for identification.)</p> <p>4 THE WITNESS: Yes, sir.</p> <p>5 BY MR. OSTOYICH:</p> <p>6 Q All right. Mr. Martello, let me know</p> <p>7 when you've flipped through it, familiarized</p> <p>8 yourself with it. And while you're doing that, it</p> <p>9 came from the company's files, the lawyer stamp on</p> <p>10 it is ZFMA0021579 through 628.</p> <p>11 A Okay.</p> <p>12 Q We're still on Exhibit 8 to your</p> <p>13 deposition, the Board minutes that you presented</p> <p>14 on the 2001 to 2005 ZF Meritor business plan to</p> <p>15 the Board, and that Mr. Molde did the technology</p> <p>16 road map, and that was Exhibit 9, right?</p> <p>17 A Yes.</p> <p>18 Q If you look at the second page of this,</p> <p>19 this says then you presented on the environmental</p> <p>20 analysis, the competition analysis, and so forth,</p> <p>21 right?</p> <p>22 A Uh-huh.</p>	<p style="text-align: right;">Page 181</p> <p>1 trends that were already in progress, I guess.</p> <p>2 A Some of them in progress, some of them</p> <p>3 were just discussion.</p> <p>4 Q The first bullet says, "The OEMs are</p> <p>5 resisting engineering new products into their</p> <p>6 vehicles due to lack of resources and</p> <p>7 fast-changing products. That was an unfavorable</p> <p>8 market trend."</p> <p>9 What did you mean by that?</p> <p>10 A I do believe that this was a period of</p> <p>11 time where most of them -- most of them had their</p> <p>12 plates full with engine changes. And every</p> <p>13 company has a certain amount of resources, and so</p> <p>14 a lot of the companies were -- a lot of the OEMs</p> <p>15 had a tremendous amount of their engineering</p> <p>16 resources tied up in engine changes and its</p> <p>17 associated changes with the truck, and so they</p> <p>18 weren't -- you know, they were less receptive to</p> <p>19 doing other work.</p> <p>20 Q I take it that was unfavorable market</p> <p>21 trend to the joint venture's perspective. Why?</p> <p>22 A Because we were trying to introduce the</p>

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<p style="text-align: right;">Page 182</p> <p>1 FreedomLines.</p> <p>2 Q So it made it harder to get the OEMs to</p> <p>3 pay attention to the new transmission product</p> <p>4 because their resources, their engineering</p> <p>5 resources were just tied up on engines?</p> <p>6 A Correct.</p> <p>7 Q Okay. And in the second unfavorable</p> <p>8 market trend you identified in this strategic plan</p> <p>9 for the Board was, "Pull-through of products is</p> <p>10 becoming more difficult because of the European</p> <p>11 influence on the industry."</p> <p>12 What did that mean?</p> <p>13 A And this is one that was more talked in</p> <p>14 actuality, but all of the -- except for</p> <p>15 International, all of the OEMs were now owned by a</p> <p>16 European company. The European way of doing</p> <p>17 business does not really have a pull-through</p> <p>18 system of products, where the supplier goes out</p> <p>19 and introduces its products to a fleet.</p> <p>20 They do all of that strictly through the</p> <p>21 OEMs. And because the European -- Europeans that</p> <p>22 were running the OEMs were not used to that</p>	<p style="text-align: right;">Page 184</p> <p>1 ownership of Freightliner, which is the biggest</p> <p>2 OEM, right?</p> <p>3 A And our biggest customer, yes.</p> <p>4 Q And your biggest customer.</p> <p>5 A And Volvo, which is our second biggest.</p> <p>6 Q Volvo, which is your second biggest, is</p> <p>7 owned by now a European company because they</p> <p>8 merged with Mack?</p> <p>9 A Yes.</p> <p>10 Q And so the European were not used to the</p> <p>11 pull-through of products, and that is becoming</p> <p>12 more difficult.</p> <p>13 What was unfavorable about that? How</p> <p>14 did that impact your business?</p> <p>15 A We did not want -- the industry did not</p> <p>16 want a strict push system where the, you know,</p> <p>17 where the fleets -- everybody that we talked to</p> <p>18 wanted to continue to have a system where the</p> <p>19 fleets had contact with the suppliers as well as</p> <p>20 the OEMs. People, the European people that I</p> <p>21 dealt with, within especially Freightliner, did</p> <p>22 not like that concept.</p>
<p style="text-align: right;">Page 183</p> <p>1 concept, they didn't like it, and that's what that</p> <p>2 means.</p> <p>3 Q Okay. So we're clear on the record, so</p> <p>4 at that point -- and this is in mid 2000 you're</p> <p>5 presenting this -- Freightliner is owned by a</p> <p>6 German company, Daimler Chrysler?</p> <p>7 A Correct.</p> <p>8 Q And Volvo Mack is owned by a European</p> <p>9 company, Volvo?</p> <p>10 A Correct.</p> <p>11 Q Or Volvo Renault?</p> <p>12 A Right.</p> <p>13 Q And then PACCAR has DAF as the owner?</p> <p>14 A I'm sorry, PACCAR is totally American</p> <p>15 owned.</p> <p>16 Q PACCAR is U.S., but they have a DAF</p> <p>17 business, but that's a separate company?</p> <p>18 A Yes.</p> <p>19 Q And then International?</p> <p>20 A International was a U.S. company.</p> <p>21 Q So when you're talking about the</p> <p>22 European influence, you're talking about Daimler's</p>	<p style="text-align: right;">Page 185</p> <p>1 Q Did not like the concept of you --</p> <p>2 A Suppliers --</p> <p>3 Q -- as a transmission manufacturer going</p> <p>4 direct to their customers?</p> <p>5 A -- going to their customers, yes.</p> <p>6 Q We have to speak one at a time or she's</p> <p>7 going to get mad at us.</p> <p>8 And I take it, so as you're rolling out</p> <p>9 the FreedomLine in the next few months, in the</p> <p>10 fall of 2000 and the spring of 2001, it's making</p> <p>11 it harder to sell it to Freightliner because to</p> <p>12 get -- to go to the fleets to get them to spec the</p> <p>13 product from Freightliner because the Daimler</p> <p>14 Chrysler influence at Freightliner is counter to</p> <p>15 that?</p> <p>16 MS. DUNCAN HACKETT: Objection.</p> <p>17 THE WITNESS: I don't -- at</p> <p>18 Freightliner, we believe it was mainly the</p> <p>19 engineering side because their resources was tied</p> <p>20 up, yes.</p> <p>21 BY MR. OSTOYICH:</p> <p>22 Q What about at Volvo Mack, did you get --</p>

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<p>1 A We didn't -- again, their resources in</p> <p>2 June were tied up.</p> <p>3 Q What I'm trying to get a sense, you say</p> <p>4 this is an unfavorable market trend, and I take it</p> <p>5 what you mean is it's going to make it harder for</p> <p>6 you to generate interest in the fleet --</p> <p>7 A Over the long run, yes. Over the long</p> <p>8 run, we felt that was going to be a negative</p> <p>9 influence to our business, correct.</p> <p>10 Q Okay. Then the third unfavorable market</p> <p>11 trend you have here is that sales incentives are</p> <p>12 increasing rapidly as the market declines. And I</p> <p>13 take it this was the period in '99-2000 where</p> <p>14 there was a slump in the truck market?</p> <p>15 A Correct.</p> <p>16 Q And so you say there's an unfavorable</p> <p>17 market trend and sales incentives are increasing</p> <p>18 rapidly as the market declines. What did you mean</p> <p>19 by that?</p> <p>20 A Eaton was out buying business. And as</p> <p>21 your volume declines and you're having to spend</p> <p>22 more and more money to generate sales, it's a</p>	<p>1 scrambling for business with the decline in the</p> <p>2 truck market?</p> <p>3 A Yes, your net price goes down.</p> <p>4 Q Then the last -- the fourth bullet here</p> <p>5 that you told the Board in July of 2000 was an</p> <p>6 unfavorable market trend was consolidation of the</p> <p>7 OEMs into large global truck and bus conglomerates</p> <p>8 is rapidly taking place.</p> <p>9 What did you mean by that?</p> <p>10 A Again, the European influence of buying</p> <p>11 up -- they bought up Freightliner, Freightliner</p> <p>12 then bought up Sterling, so it took Ford out of</p> <p>13 the market.</p> <p>14 Volvo was a combination of the old GM</p> <p>15 auto car, five or six other at one time truck</p> <p>16 companies. Western Star got bought out by</p> <p>17 Freightliner, Daimler Chrysler.</p> <p>18 So these companies were being bought up,</p> <p>19 and mainly by large global companies, so there was</p> <p>20 not a lot of -- there wasn't -- besides PACCAR and</p> <p>21 Navistar, which we knew were having discussions,</p> <p>22 at least at that time, with people. There was no</p>
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<p>1 negative to your profit line.</p> <p>2 Q Just so we're clear on the record, so</p> <p>3 when you say Eaton was out buying business,</p> <p>4 they're providing incentives, discounts of some</p> <p>5 sort, rebates, to get customers to spec their</p> <p>6 products?</p> <p>7 A Correct.</p> <p>8 Q And I take it you guys were doing the</p> <p>9 same thing because the market is declining and</p> <p>10 there are fewer trucks being purchased at the</p> <p>11 time?</p> <p>12 A Yes, we were doing the same thing.</p> <p>13 Q And that's unfavorable to ZF Meritor,</p> <p>14 your joint venture, profit line?</p> <p>15 A Profitability.</p> <p>16 Q So prices are going down, so you're just</p> <p>17 going to be less profitable as everybody is</p> <p>18 scrambling for business in a down truck market; is</p> <p>19 that fair?</p> <p>20 A Excuse me? I'm --</p> <p>21 Q Your prices are going down and everybody</p> <p>22 is going to be less profitable and everybody is</p>	<p>1 strictly U.S.-owned truck companies because, like</p> <p>2 I say, PACCAR was even becoming global.</p> <p>3 Q So I take it your customers, your --</p> <p>4 your big truck customers, are getting and bigger</p> <p>5 during this period; you're pointing that out?</p> <p>6 A Yes.</p> <p>7 Q And what's unfavorable to the joint</p> <p>8 venture about that trend?</p> <p>9 A OEM -- the larger the OEM, the more</p> <p>10 leverage they have on you.</p> <p>11 Q So as they get bigger and bigger and buy</p> <p>12 each other up, they have more leverage to</p> <p>13 negotiate lower pricing and better terms. Is that</p> <p>14 fair?</p> <p>15 A They have more leverage in total, yes.</p> <p>16 Q And they're using that leverage to</p> <p>17 purchase at lower prices and get better terms for</p> <p>18 products?</p> <p>19 A Plus worldwide, yes.</p> <p>20 Q And I take it that's unfavorable</p> <p>21 because, again, your prices are going to go down</p> <p>22 as the seller --</p>

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<p style="text-align: right;">Page 190</p> <p>1 A The profitability goes down.</p> <p>2 Q We've really got to try not to --</p> <p>3 And then at the bottom, you summarize</p> <p>4 and say, "All of these factors are driving toward</p> <p>5 the elimination of the pull system," which is</p> <p>6 where you're reaching out to the fleets to try and</p> <p>7 generate demand and get them to spec your</p> <p>8 transmissions in their trucks, right?</p> <p>9 A Correct.</p> <p>10 Q "These factors are driving towards the</p> <p>11 creation of closer relationships with the OEMs,</p> <p>12 and the desire to have single-source full product</p> <p>13 line suppliers or possible integration by the</p> <p>14 OEMs."</p> <p>15 What did you mean by, "These factors are</p> <p>16 driving towards the desire to have single-source</p> <p>17 full product line suppliers or possible</p> <p>18 integration by the OEMs"?</p> <p>19 A The European -- the European market</p> <p>20 tells their customers, here's a truck. If you</p> <p>21 want to buy a Daimler Chrysler truck, this is what</p> <p>22 you get. If you want to buy a Volvo truck, this</p>	<p style="text-align: right;">Page 192</p> <p>1 getting purchased by the European companies, it's</p> <p>2 causing them to look at decreasing the number of</p> <p>3 options that they're making available for various</p> <p>4 components?</p> <p>5 A It's a desire by them to drive the</p> <p>6 market more like a European market.</p> <p>7 Q And part of that is to not provide</p> <p>8 multiple options for every component in the truck?</p> <p>9 In other words, just to provide one -- one option,</p> <p>10 a single-source axle for their trucks to their</p> <p>11 customers?</p> <p>12 A That is correct.</p> <p>13 Q And so they're looking at, with the</p> <p>14 European influence, they're looking at providing</p> <p>15 their customers with just a single source of</p> <p>16 transmissions?</p> <p>17 A A single truck, yes.</p> <p>18 Q And they're looking at full product line</p> <p>19 suppliers, one customer that can provide all the</p> <p>20 different products that they need to offer a</p> <p>21 single --</p> <p>22 A They may be looking at --</p>
<p style="text-align: right;">Page 191</p> <p>1 is what you get.</p> <p>2 The U.S. market had always been more</p> <p>3 open to multifunctional -- or multispecification</p> <p>4 of parts within a truck, and that's what that</p> <p>5 statement means.</p> <p>6 Q And what about the second part of that</p> <p>7 statement where you say, "These factors are</p> <p>8 driving towards the desire to have single-source</p> <p>9 full product line suppliers"?</p> <p>10 A That's what I'm saying. The -- the OEMs</p> <p>11 in Europe says, here's a truck. If you want to</p> <p>12 buy my truck, this is what you get.</p> <p>13 So you've got a single source, a single</p> <p>14 product. You couldn't specify -- in Europe, you</p> <p>15 don't specify -- in the United States or in North</p> <p>16 America, people specify fan belts and light bulbs.</p> <p>17 In Europe, they can't even specify what engine and</p> <p>18 transmission they want. I mean, that's what it</p> <p>19 means.</p> <p>20 Q So am I right, Mr. Martello, essentially</p> <p>21 you're saying the European influence, as the OEMs,</p> <p>22 the customers are getting bigger and they're</p>	<p style="text-align: right;">Page 193</p> <p>1 Q -- manufacturer of transmissions?</p> <p>2 A -- certain products for each product</p> <p>3 that they introduce. They just -- they want to</p> <p>4 reduce the number of -- they want to reduce the</p> <p>5 specification of products or components on their</p> <p>6 truck.</p> <p>7 Q So in other words, buy more of their</p> <p>8 components from one manufacturer for axles and</p> <p>9 brakes, and more from one manufacturer of</p> <p>10 transmissions?</p> <p>11 A I don't think they care about that. I</p> <p>12 think they care about not having individual</p> <p>13 components spec'd by the fleets in their truck.</p> <p>14 Q So just provide a -- sort of a set</p> <p>15 option, no ability to vary the set option?</p> <p>16 A That's correct. The next page really</p> <p>17 explains what I was talking about, a consolidation</p> <p>18 of the industry into major --</p> <p>19 Q It references some specific companies,</p> <p>20 Daimler Chrysler purchased Mercedes; Freightliner,</p> <p>21 Sterling, Western Star and so forth?</p> <p>22 A Correct.</p>

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<p>1 Q Volvo had purchased Renault, Mack, 2 Mitsubishi, Nissan diesel, et cetera? 3 A Correct. 4 Q The page after that is -- it says 5 "Environmental Threats," and the last bullet seems 6 to reflect what you were talking about. It says 7 the purchasing power of the remaining OEMs with 8 increased competition erodes the margins of the 9 suppliers. Do you see that? 10 A Correct. 11 Q I take it that's a reference as to as 12 these OEMs get bigger and bigger and buy each 13 other up, they have better negotiating power, 14 which is driving our prices down lower and our 15 margins down lower. Is that fair? 16 A Correct. 17 Q If you'll look further into your 18 strategic plan, with the last two numbers 93, you 19 should see a page that says, "Our recommendation." 20 A Yes. 21 Q And I take it this is the recommendation 22 that you had in the strategic plan which you</p>	<p>1 demonstrate again that Daimler Chrysler is a 2 concern because they can start bringing their own 3 transmissions into North America? 4 A Correct. Not -- not at the time. If 5 you looked at that page and you read the -- Claude 6 Elson's comment, it says, "We aim to be a full 7 line supplier in markets of our products. 8 Acquisitions, collaborations are valid ways of 9 extending PTU's offering." 10 So Powertrain -- Daimler Powertrain was 11 a division of Daimler Chrysler. 12 Q Right. As part of your five-year plan 13 for ZF Meritor, you say, "This is something we 14 need to be conscious of." 15 A Correct. 16 Q "They can start to move into 17 manufacturing transmissions for NAFTA, for North 18 America." 19 A Correct. 20 Q So the next page you've got a page, 21 looks like it's from a Daimler Chrysler Web site 22 that says, "Shifting into a Higher Gear,</p>
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<p>1 presented to the Board of ZF Meritor in July of 2 2000, right? 3 A Yes. 4 Q Okay. And you say, "We need to leapfrog 5 Eaton and establish the FreedomLine as the 6 industry standard for automated manual 7 transmission, for example." 8 A Yes. 9 Q And then down below it, the fourth 10 bullet down, you say -- again, you're 11 reiterating -- "We need a full class 8 product 12 line. LL, 14-speeds and 15-speeds are key." 13 Right? 14 A Yes, that's what it says. I believe the 15 "14" is a misprint, but -- 16 Q It should be 13? 17 A I believe so, but I wouldn't swear to 18 it. 19 Q And then the page after that, a couple 20 of pages after that, it's got, "Daimler Chrysler 21 Powertrain, here they come." And I take it this 22 is a series of pages you put together to</p>	<p>1 Transmissions for a Whole New World," right? 2 A It's a -- I do believe it's a page out 3 of their -- it's a copy of something from a 4 Daimler -- or a Powertrain -- Daimler Powertrain 5 brochure of some kind. 6 Q Right, showing that they're in fact 7 making some transmissions for their own use in 8 Europe? 9 A European-style transmissions. 10 Q Okay. Let's -- let's go off the record 11 and stop for lunch. 12 THE VIDEOGRAPHER: Going off the record. 13 This is the end of Tape 3. The time is 12:48 p.m. 14 (Lunch break taken.) 15 THE VIDEOGRAPHER: Back on record. This 16 is Tape No. 4. The time is 1:32 p.m. 17 BY MR. OSTOYICH: 18 Q Mr. Martello, welcome back. 19 Do you have anything from this morning's 20 testimony you want to change or amend? 21 A No, sir. 22 Q We're going to mark as Exhibit 11 to</p>

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<p>1 your deposition a series of e-mails which you  2 received copies of, R. Martello, Rick Martello, in  3 February of 2001, again produced by your lawyers  4 to me out of the company's files, ZFMA0187126 and  5 27. I'm going to ask you to take a look at these.  6 (Martello Deposition Exhibit No. 11 was  7 marked for identification.)  8 THE WITNESS: Yes, sir.  9 BY MR. OSTOYICH:  10 Q Mr. Martello, you've had a chance to  11 look at Exhibit 11 to your deposition?  12 A Yes.  13 Q These are a series of e-mails from  14 Robert Rosenthal to Charlie Allen with a copy to  15 Rick Martello on February 13th, 2001.  16 Do you see that in the middle of the  17 first page?  18 A Yes, sir.  19 Q And that's an e-mail you received from  20 Mr. Rosenthal in the ordinary course of your  21 duties as President of ZF Meritor, right?  22 A Yes, sir.</p>	<p>1 series, right?  2 MS. DUNCAN HACKETT: Objection.  3 THE WITNESS: I only know what I'm  4 reading here, and that is that they did a survey.  5 I don't know who did it or --  6 BY MR. OSTOYICH:  7 Q Okay.  8 A I don't know who did it, how many people  9 were involved. All I know is what's on this  10 paper.  11 Q Fair enough. Let's try to get to the  12 bottom. So Mr. Rosenthal at that time worked for  13 ArvinMeritor, right?  14 A Correct.  15 Q And he is in what position?  16 A I don't know exact title, but he was  17 responsible for the service organization --  18 something to do with the service organization of  19 ArvinMeritor.  20 Q Including the service of the  21 transmissions that ZF Meritor was selling, right?  22 A That's correct.</p>
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<p>1 Q And there's a response from Mr. Allen to  2 Mr. Rosenthal later that same day with a copy to  3 you, and you received that in the ordinary course,  4 right?  5 A I don't see that, but --  6 Q Right at the top of the first page.  7 A Okay, yes.  8 Q Now, Mr. Rosenthal, the subject matter  9 of his e-mail that you received a copy says DSM  10 Survey of G platform issues, February 9th, 2001.  11 Do you see that, middle of the first  12 page?  13 A Are you talking about, "In this survey  14 we just completed, there were approximately," is  15 that the sentence you're talking about?  16 Q I was talking about the subject line for  17 Mr. Rosenthal, which says DSM Survey of  18 G platform issues.  19 A Yes, I see that.  20 Q I take it the company conducted a survey  21 of its district service managers in February of  22 2001 regarding the G platform manual transmission</p>	<p>1 Q So Mr. Rosenthal sends an e-mail to  2 Mr. Allen, who is your Director of Sales and  3 Marketing at the joint venture, right?  4 A Correct.  5 Q He copied you, and he says, "Charlie,  6 Our District Service Managers" -- and that's the  7 ArvinMeritor district service managers, right?  8 A That's correct.  9 Q -- "responded to this survey over the  10 past week with issues that they are aware of, from  11 their daily contacts, with 'G' platform  12 transmissions," and those are manual transmissions  13 that ZF Meritor offered to customers in  14 February 2001, right?  15 A G platform, yes.  16 Q Those are 9 and 10-speed manuals?  17 A Yes.  18 Q Mr. Rosenthal tells Mr. Allen and you in  19 this e-mail, "As you are aware, product issues  20 this early in the Warranty period, go through the  21 OEM dealers, and many times we are not notified of  22 an issue, unless there is a problem getting parts.</p>

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<p>1 "In this survey we just completed, there 2 were approximately 435 unit downs with 'G' 3 platform transmissions." Then he's got a 4 breakdown of data showing the various problems 5 with the G platform that were found in the survey, 6 right? 7 A Correct. 8 Q So he's got, for example, range piston 9 sale leakage, there were 187 occurrences, right? 10 A Correct. 11 Q Air filter regulator, 95 occurrences? 12 A Correct. 13 Q Top cover miscellaneous, I take it there 14 were miscellaneous top cover problems, 51 15 occurrences? 16 A Correct. 17 Q Shift bar breakage, 34 occurrences? 18 A Correct. 19 Q Pin fallout/overdrive shift bar, 11 20 occurrences, right? 21 A Correct. 22 Q And he says to Mr. Allen and to you and</p>	<p>1 they're faced with multiple G platform issues. 2 That's what he says, right? 3 A That's what it says, yes. 4 Q And then he identifies in item 4, "At 5 one of our Conquest Fleets, Eagle Express," and a 6 conquest fleet is what a customer that you want to 7 win or you have won, is that fair? 8 MS. DUNCAN HACKETT: Objection. 9 THE WITNESS: I'm having a hard time 10 with why it's capitalized, but I would say a 11 conquest fleet is one that -- it's a fleet that we 12 were selling transmissions to, but -- 13 BY MR. OSTOYICH: 14 Q A fleet you converted from somebody 15 else's transmissions, that's conquest? 16 A I don't know if that's true. 17 Q Well, he says that one of our conquest 18 fleets, Eagle Express, "bought 9 units, and all 9 19 have gone down, with one unit a second time. 20 Range piston seal leakage is the primary issue. 21 This first time buyer, has lost confidence in us 22 as a transmission manufacturer."</p>
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<p>1 the others, "A very high frustration level, as you 2 know, is being reached by our Customers, and our 3 Field Organization. 4 "Reasons for this frustration are: 5 "1. Multiple repairs, different 6 problem, on the same transmission/truck; 7 "2. Repeat failures, of the same issue, 8 on the same transmission; 9 "3. Many loyal customers, are just 10 recovering from Meritor transmission thrust washer 11 issue downtime and now are faced with multiple 12 'G' platform issues." 13 Do you see that? 14 A Thrust washer issue is the same issue I 15 called a bearing issue. 16 Q So he's saying many of our customers -- 17 many loyal customers are just recovering from the 18 bearings or the thrust washer issue, which led the 19 company to recall its transmissions, right? 20 A The bearing issue, yes. 21 Q And so the loyal customers, many loyal 22 customers are just recovering from that, and now</p>	<p>1 Do you see that? 2 A Yes. 3 Q And then in the next one, number 5, it 4 says, "Established, customers such as Les Hazen of 5 Prime, feels we do not know how to make a 'good' 6 transmission." Do you see that? 7 A I see the words, and I know Lee Hazen. 8 Q You know Les Hazen? 9 A I know of him, yes. 10 Q Do you know Prime is a fleet customer of 11 yours? 12 A Yes. 13 Q Now, Mr. Allen responds up at the top of 14 that first page -- you're on the second page, but 15 at the top -- go ahead, take a look at the second 16 page. 17 A Okay, go ahead. I read the top. 18 Q Up at the top, Mr. Allen, your Director 19 of Sales and Marketing, responds to Mr. Rosenthal, 20 "Bob, Engineering is making many changes to 21 improve the performance of the 'G' platform 22 transmissions. I suggest that you and the</p>

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<p style="text-align: right;">Page 206</p> <p>1 Regional service managers meet with engineering 2 and service to review these changes at Laurinburg. 3 We recognize that the field has lost confidence in 4 the product." 5 Do you see that? 6 A Yes, sir. 7 Q And that's a reference to the North 8 American field organization of ArvinMeritor, 9 right? 10 A That's true. 11 Q Now, I take it, Mr. Martello, you got 12 other reports like this from the North American 13 field organization or Mr. Rosenthal setting out 14 problems with the Jeep platform transmissions? 15 MS. DUNCAN HACKETT: Objection. 16 BY MR. OSTOYICH: 17 Q Is that fair? 18 A I knew of the problems with the 19 G platform transmission, if that's what you -- 20 Q Fair enough. I take it there were 21 multiple problems, right? He set out five here, 22 right?</p>	<p style="text-align: right;">Page 208</p> <p>1 A The base design was from Nissan, and 2 then changes -- we used letters to designate major 3 changes to the platform. 4 Q So this is a G platform that was based 5 on a Nissan design. Did the company have any 6 manual transmissions that it designed on its own? 7 A Totally on its own? No. 8 Q So you took the Nissan design, and you 9 made changes to it to create the G platform, is 10 that fair? 11 A Over a period of time. It was 12 F platform before that, and then it went to 13 G platform. 14 Q All right. I'm going to hand you 15 Exhibit 12 to your deposition, which is a 16 ZF Meritor Internal Letter from R. Martello, 17 President, to Tom Gosnell, Dennis Kline, and a 18 list of people. It's a February 2001 Activity 19 Report, and I'm going to ask you to take a look at 20 that. 21 (Martello Deposition Exhibit No. 12 was 22 marked for identification.)</p>
<p style="text-align: right;">Page 207</p> <p>1 MS. DUNCAN HACKETT: Objection. 2 THE WITNESS: Yeah. Understand the 3 G platform transmission was a change from a 4 three -- three-bar to a single-bar transmission, 5 just as Eaton did trying to do with the Lightning. 6 We had problems with the single-shift 7 rail, and went back to the three-shift rail to fix 8 the problem. That happened over a period of time, 9 yes. 10 BY MR. OSTOYICH: 11 Q Now, we saw earlier that when Rockwell 12 entered the transmission business in '87, you said 13 that they had used a design that they purchased 14 from Nissan, right? 15 A A design that they purchased from 16 Nissan, that's correct. 17 Q Is this G platform, is this the first 18 transmission design that the company had rolled 19 out for manual transmissions? 20 A The G platform is just a continuation of 21 that same product. 22 Q Who designed it?</p>	<p style="text-align: right;">Page 209</p> <p>1 THE WITNESS: Yes, sir. 2 BY MR. OSTOYICH: 3 Q Okay. While you're -- you had a chance 4 to look at it. You recognize it, right? 5 A Yes, I know what it is. 6 Q This is a -- 7 A It's a monthly activity report that we 8 put together. 9 Q I take it this is a February 2001 10 Activity Report that you sent to the list of 11 people here, Mr. Gosnell, Mr. Kline and others, on 12 March 15th, 2001, in the ordinary course of your 13 duties as President of the ZF Meritor joint 14 venture, right? 15 A That is correct. 16 Q Now, for the record, it came from the 17 company's files, it's ZFMA0196697 to 705. 18 Now, this February 2001 Activity Report, 19 on the second page, you tell Mr. Gosnell and 20 Mr. Kline and the others -- these are the Board 21 members of ZF Meritor, right? 22 A The majority of them.</p>

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<p>1 Q Mr. Gosnell was on the Board, Mr. Kline 2 was on the Board? 3 A Correct. 4 Q Mr. Vogel was on the Board? 5 A Correct. 6 Q Mr. Lutz? 7 A Correct. 8 Q Was Mr. Orchard on the Board? 9 A Correct. 10 Q And then Mr. Madden is the CFO of 11 ArvinMeritor, right? 12 A He was on the Board. 13 Q And what about Walzer? 14 A No. 15 Q Who is Mr. Walzer? 16 A He's just a person at ZF that requested 17 that I send him activity reports. 18 Q What was his position? 19 A I don't know of his title. He worked in 20 the financial area of -- he worked in the 21 financial area of ZF in Germany. 22 Q So on the first page, in the sales and</p>	<p>1 the Board members of ZF Meritor? 2 A Correct. 3 Q Now, on the second page there's a 4 section that says Market Share &amp; Volume Analysis, 5 and then below that, below the first three 6 bullets, it says, "Customer Complaints, 7 Transmission: Continue to handle issues related 8 to 'G' Platform, including air filter regulators, 9 top covers, and range pistons." 10 I take it that reflects that you're 11 informing the Board of ZF Meritor in March of 2001 12 that you were continuing to handle problems with 13 the G platform related to the air filter 14 regulator, top covers and range pistons, right? 15 A That's what it says, yes. 16 Q You say, "It is imperative that all of 17 the fixes are implemented as soon as possible to 18 help control warranty cost." 19 A Correct. 20 Q And what did you mean it's imperative 21 that the fixes -- all of the fixes are implemented 22 as soon as possible?</p>
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<p>1 marketing information, you say the marketing 2 conditions in the U.S. economy has slowed 3 dramatically. GDP growth is nearly flat, National 4 Association of Business Economists puts the risk 5 of recession at one-in-three currently. The 6 manufacturing sector, a major generator of truck 7 freight, has actually been in recession for a 8 few months. 9 I take it that's a reflection of the 10 fact that in the spring of 2001, you're still in 11 this sort of prolonged slump in the Class 8 truck 12 demand, is that fair? 13 A I would say it's a fair assumption from 14 these words. 15 I would like to make one point. These 16 activity reports were a -- I got activity reports 17 from my direct reports. I combined them and sent 18 this out. So mostly everything in here, 19 especially what you're reading right now, came out 20 of Charlie Allen's activity report to me, so -- 21 Q Fair enough. And you took what 22 Mr. Allen gave you, and you're passing it on to</p>	<p>1 A We had -- our engineering department had 2 come up with a how we were going to remedy all the 3 problems with the G platform at the time, and this 4 simply means we felt that we needed to get the 5 fixes into the product so that we could -- if you 6 let the thing totally fail, you would have a 7 larger cost to replace a whole transmission than 8 you would to replace a range piston, for instance. 9 Q I'm going to hand you as the next 10 exhibit, Mr. Martello, the April 3rd, 2001, 11 ZF Meritor LLC Board of Directors meeting minutes, 12 again from the company's files, ZFMA0034144 to 51, 13 and I'm going to ask you to take a look at that. 14 (Martello Deposition Exhibit No. 13 was 15 marked for identification.) 16 BY MR. OSTOYICH: 17 Q While you are looking at Exhibit 13 to 18 your deposition, I'll just identify it. 19 April 3rd, 2001 meeting, held at 20 ZF Meritor facility, Laurinburg, North Carolina, 21 commencing at 8:00 a.m. on Tuesday, April 3rd, 22 2001.</p>

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<p style="text-align: right;">Page 214</p> <p>1 The following members of the Board were</p> <p>2 present, then there's a list of names, and it says</p> <p>3 also present in person at the meeting at the</p> <p>4 request of the directors were the following</p> <p>5 individuals, among others, including Richard</p> <p>6 Martello, President of the company.</p> <p>7 Have you had a chance to look at</p> <p>8 Exhibit 13?</p> <p>9 A Yes, I saw it.</p> <p>10 Q I take it you in fact attended this</p> <p>11 Board of Directors meeting at ZF Meritor?</p> <p>12 A That is correct.</p> <p>13 Q Be careful, Mr. Martello. She's shaking</p> <p>14 her head because you're talking over me.</p> <p>15 A That is correct.</p> <p>16 Q Now, at this Board of Directors meeting,</p> <p>17 I take it -- the second page it says there was a</p> <p>18 presentation of warranty and a discussion of</p> <p>19 G platform issues, right?</p> <p>20 A Two separate presentations, yes.</p> <p>21 Q Okay. First it was a presentation of</p> <p>22 warranty by PriceWaterhouseCoopers, right?</p>	<p style="text-align: right;">Page 216</p> <p>1 presentation that PriceWaterhouseCoopers made to</p> <p>2 the Board of Directors at this meeting you</p> <p>3 attended in April of 2001, that the company's</p> <p>4 transmission and clutch warranty reserves were</p> <p>5 understated?</p> <p>6 A I know, and I remember, the presentation</p> <p>7 was made. I do not believe -- it says that they</p> <p>8 were at this Board meeting, but it doesn't list</p> <p>9 them as being present, so I don't know if they</p> <p>10 made the actual presentation or they presented it</p> <p>11 to someone who made the presentation. I know I</p> <p>12 did not have anything to do with the presentation.</p> <p>13 Q Fair enough. But you were at the Board</p> <p>14 meeting, and someone made a presentation on</p> <p>15 conclusions --</p> <p>16 A Yes.</p> <p>17 Q -- reached by PriceWaterhouseCoopers'</p> <p>18 audit --</p> <p>19 A Correct.</p> <p>20 Q -- that the company's transmission and</p> <p>21 clutch warranty reserves were understated?</p> <p>22 A That is correct.</p>
<p style="text-align: right;">Page 215</p> <p>1 A That is correct.</p> <p>2 Q And it says to two representatives from</p> <p>3 PriceWaterhouseCoopers -- that's the accounting</p> <p>4 firm that ZF Meritor used at the time, right?</p> <p>5 A It's an accounting firm used by</p> <p>6 ArvinMeritor to do this study.</p> <p>7 Q Okay. So ArvinMeritor had</p> <p>8 PriceWaterhouseCoopers do a study, and it says two</p> <p>9 representatives from PriceWaterhouseCoopers</p> <p>10 presented PriceWaterhouseCoopers' analysis of the</p> <p>11 warranty procedures and warranty liability</p> <p>12 exposure of the company, right?</p> <p>13 A Correct.</p> <p>14 Q And then below that at the bottom of the</p> <p>15 page it says the PriceWaterhouseCoopers audit</p> <p>16 conclusions were then summarized in three general</p> <p>17 areas, and the first one says that the company's</p> <p>18 transmission and clutch warranty reserves are</p> <p>19 understated due to specific warranty exposures</p> <p>20 excluded from the accrual, right?</p> <p>21 A That's what it says.</p> <p>22 Q And I take it that was part of the</p>	<p style="text-align: right;">Page 217</p> <p>1 Q Then on the next page it says, page 3,</p> <p>2 up at the top, a report was distributed to the</p> <p>3 Board, and there was discussion that touched on</p> <p>4 the following items.</p> <p>5 Do you see where I am up at the top?</p> <p>6 A Yes.</p> <p>7 Q And one of the items that was discussed</p> <p>8 at that Board meeting you attended in April 2001</p> <p>9 was the high failure rates on the G platform</p> <p>10 manual transmissions the company offered, right?</p> <p>11 A That's what it says, yes.</p> <p>12 Q And if I look a few pages further in,</p> <p>13 Mr. Martello, on page 5 of this document, there's</p> <p>14 a section that says G platform issues.</p> <p>15 Do you see where I am?</p> <p>16 A Yes.</p> <p>17 Q And it says, "Mr. Molde, Chief Engineer</p> <p>18 of the Company, then discussed current conditions</p> <p>19 affecting warranty issues for G platform.</p> <p>20 Mr. Molde discussed the spike in G platform</p> <p>21 failures, which are due to a number of factors,</p> <p>22 including supplier quality."</p>

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<p>1 Do you see that?</p> <p>2 A That's what it says, yes.</p> <p>3 Q And I take it that reflects that</p> <p>4 Mr. Molde, the chief engineer of the joint</p> <p>5 venture, made a presentation to the Board of</p> <p>6 Directors in April 2001 at the meeting you</p> <p>7 attended where he discussed the spike in</p> <p>8 G platform failures, which are due to a number of</p> <p>9 factors, including supplier quality?</p> <p>10 A That's correct.</p> <p>11 Q Now, down at the bottom of that same</p> <p>12 page, Mr. Martello says that you made a</p> <p>13 presentation on market presentation.</p> <p>14 Do you see that?</p> <p>15 A Yes.</p> <p>16 Q And again it sounds like, at this April</p> <p>17 2001 Board of Directors meeting, you again raised</p> <p>18 with the Board of Directors why the company needs</p> <p>19 a full product line; is that right?</p> <p>20 A That's what it says, yes.</p> <p>21 Q And it says you noted, up in the top of</p> <p>22 the next page, a full product line is important in</p>	<p>1 having a full product line would be important to</p> <p>2 keep the residual value of trucks -- having a full</p> <p>3 transmission product line would help the residual</p> <p>4 value of the trucks?</p> <p>5 A At this time in my -- at this time, I</p> <p>6 wouldn't say that was a true statement, but I must</p> <p>7 have thought for some reason it was back then.</p> <p>8 Q Fair enough. You don't remember the</p> <p>9 details now, but that is what you told the Board.</p> <p>10 A I don't remember the details.</p> <p>11 Absolutely.</p> <p>12 Q We're going to mark as Exhibit 14 to</p> <p>13 your deposition a series of e-mails that you were</p> <p>14 copied on in October of 2001, and I'm going to ask</p> <p>15 you to take a look at those.</p> <p>16 (Martello Deposition Exhibit No. 14 was</p> <p>17 marked for identification.)</p> <p>18 THE WITNESS: Yes, sir.</p> <p>19 BY MR. OSTOYICH:</p> <p>20 Q You've had a chance to look at</p> <p>21 Exhibit 14 to your deposition?</p> <p>22 A Yes.</p>
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<p>1 gaining a partnership with any OEM, protecting the</p> <p>2 linehaul business and protecting the residual</p> <p>3 value in the used truck market, right?</p> <p>4 A Yes.</p> <p>5 Q What was having a full product line</p> <p>6 important for protecting residual value in the</p> <p>7 used truck market? What did you mean by that?</p> <p>8 A I honestly don't remember.</p> <p>9 Q But I take it you were telling the</p> <p>10 Board, in effect, to protect the residual value,</p> <p>11 to keep the residual value of trucks with</p> <p>12 transmissions high enough, you have to have a full</p> <p>13 product line, or it would help to have a full</p> <p>14 product line?</p> <p>15 MS. DUNCAN HACKETT: Objection.</p> <p>16 THE WITNESS: Again, I really don't know</p> <p>17 why -- I don't remember anything about protecting</p> <p>18 residual value of the used truck market. I really</p> <p>19 do not.</p> <p>20</p> <p>21 BY MR. OSTOYICH:</p> <p>22 Q In general, would you agree with me that</p>	<p>1 Q Okay. This is a document, again</p> <p>2 produced by your lawyer to me, ZFMA0293315 at the</p> <p>3 bottom. This is a series of e-mails that you</p> <p>4 received copies of in the ordinary course of your</p> <p>5 duties as the President of ZF Meritor in</p> <p>6 October 2001, right?</p> <p>7 A Yes.</p> <p>8 Q Okay. Now, the first one down at the</p> <p>9 bottom, chronologically it's the first one. It's</p> <p>10 an e-mail from Charlie Allen, your Director of</p> <p>11 Sales and Marketing, to Dennis Kline, who is the</p> <p>12 head of the ArvinMeritor sales organization,</p> <p>13 right?</p> <p>14 A Yes.</p> <p>15 Q And Mr. Burmeister, who is the head of</p> <p>16 the North American field organization for</p> <p>17 ArvinMeritor at the time, right?</p> <p>18 A I believe so.</p> <p>19 Q And on October 3rd, 2001, Mr. Allen says</p> <p>20 to them -- just so we're clear, they're</p> <p>21 responsible ultimately for selling the</p> <p>22 transmissions that ZF Meritor offered, right?</p>

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<p style="text-align: right;">Page 222</p> <p>1 A That's correct.</p> <p>2 Q Mr. Allen says, "As a reminder ZFM does</p> <p>3 not have any sales policy funds budgeted in</p> <p>4 FY '02."</p> <p>5 Now, fiscal year '02 is the year</p> <p>6 starting in October 2001 going for the next</p> <p>7 12-month period, right?</p> <p>8 A Fiscal year '02 would be October 1 of</p> <p>9 2001 to September 31st, 2002.</p> <p>10 Q And Mr. Allen is telling the sales</p> <p>11 organization of ArvinMeritor, responsible for</p> <p>12 selling the transmissions, that the joint venture</p> <p>13 at ZF Meritor does not have any sales policy funds</p> <p>14 budgeted for the upcoming 12-month period, right?</p> <p>15 A There was no funds available directly</p> <p>16 for the sales organization. They had to get it</p> <p>17 approved -- every one of them approved by me.</p> <p>18 Q What is a sales policy fund? What is</p> <p>19 that?</p> <p>20 A That was one of the problems. We had</p> <p>21 difference of opinion in what the sales policy</p> <p>22 fund was.</p>	<p style="text-align: right;">Page 224</p> <p>1 A Correct.</p> <p>2 Q And in what ways? Give me examples of</p> <p>3 how that fund of money would be used.</p> <p>4 A I'm trying to give you a good example</p> <p>5 that I can say is an actual example.</p> <p>6 A good example would be a product that's</p> <p>7 50,000 miles or six months out of the warranty</p> <p>8 period, but it is a good customer, and they're</p> <p>9 complaining about it, and you go ahead and make</p> <p>10 some type of settlement with them and say, okay,</p> <p>11 you know, you're a good customer, we don't think</p> <p>12 it's in the warranty period, but since you're a</p> <p>13 good customer, here's the money that we agreed on</p> <p>14 that would be compensation for the problem.</p> <p>15 Q You said before that there was a</p> <p>16 difference of opinion. Who had a different</p> <p>17 opinion of what the sales policy fund was?</p> <p>18 A Who had a different opinion? Me and</p> <p>19 every sales guy at ArvinMeritor.</p> <p>20 Q So Mr. Burmeister, Mr. Kline, and their</p> <p>21 organizations?</p> <p>22 A Yes.</p>
<p style="text-align: right;">Page 223</p> <p>1 Q What do you mean a difference of</p> <p>2 opinion?</p> <p>3 A I believe that it should be used only in</p> <p>4 cases that are not in any way, shape or form</p> <p>5 warranty type of -- or competitive equalization</p> <p>6 type of situations, and I wanted to better -- we</p> <p>7 just had a difference of opinion of how it should</p> <p>8 be used, and I just said, to resolve that, you're</p> <p>9 going to have to go through me on what you want to</p> <p>10 do, and I have to approve it.</p> <p>11 Q Spell it out a little bit for me.</p> <p>12 So your view of a sales policy fund was</p> <p>13 that it should be related to what?</p> <p>14 A Excuse me?</p> <p>15 Q Your view of a sales policy fund was</p> <p>16 that it should be related to what?</p> <p>17 A Well, it should be related strictly to</p> <p>18 goodwill. Strictly to goodwill.</p> <p>19 Q Goodwill of the fleets, or the OEMs?</p> <p>20 A Mainly the fleets.</p> <p>21 Q And was it a fund of money that was used</p> <p>22 to generate goodwill at the fleets?</p>	<p style="text-align: right;">Page 225</p> <p>1 Q And how did they view -- what were they</p> <p>2 telling you they viewed the sales policy fund as</p> <p>3 being for?</p> <p>4 A Any situation that they wanted to make</p> <p>5 the customer happy because of a problem.</p> <p>6 Q Give me an example of something they</p> <p>7 brought to you, and you said, well, I don't want</p> <p>8 to spend the joint venture's money on that.</p> <p>9 A A claim that we turned down because we</p> <p>10 said it wasn't our fault, the driver did this, we</p> <p>11 can prove that they didn't -- the service people</p> <p>12 didn't do this, that's what caused the problem,</p> <p>13 not anything that had to do with what we did, but</p> <p>14 that irritated the customer.</p> <p>15 It was easy for them to say, rather than</p> <p>16 have an irritated customer, just say, okay, we'll</p> <p>17 pay you for that.</p> <p>18 Q But I take it the sales policy funds</p> <p>19 were coming from your budget at the joint venture,</p> <p>20 not from the ArvinMeritor sales and marketing</p> <p>21 budget?</p> <p>22 A Anything to do with transmissions and an</p>

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<p>1 clutches at the time came from our budget.</p> <p>2 Q So was it your decision then in the fall</p> <p>3 of 2001 to tell the ArvinMeritor sales and</p> <p>4 marketing force we're not putting sales policy</p> <p>5 funds in the budget. You're going to have to come</p> <p>6 to me and get my approval?</p> <p>7 A That's correct.</p> <p>8 Q At that time, how large -- give me an</p> <p>9 idea, ballpark, how large the sales policy fund</p> <p>10 was for the company for a given year. Was it</p> <p>11 \$5,000 for the year, or was it hundreds of</p> <p>12 thousands or a million dollars a year?</p> <p>13 A Between 500 and \$2 million would be my</p> <p>14 estimate.</p> <p>15 Q And I take it now there's an e-mail then</p> <p>16 in response to Mr. Allen from Kurt Burmeister, the</p> <p>17 head of the North American field organization at</p> <p>18 ArvinMeritor, and I take it he's disagreeing with</p> <p>19 your decision on not putting sales policy funds in</p> <p>20 the budget for the upcoming fiscal year, right?</p> <p>21 A He's disagreeing. No sales individual</p> <p>22 likes to have to come and get things approved, and</p>	<p>1 venture is that your action in eliminating the</p> <p>2 sales policy fund from the upcoming budget for the</p> <p>3 upcoming year is a severe limitation on our effort</p> <p>4 to sell transmissions in light of our track record</p> <p>5 concerning quality performance, right?</p> <p>6 A That's what's in this statement, but he</p> <p>7 was a guy that would -- let's get a list of</p> <p>8 excuses and use them on why we don't do something,</p> <p>9 so --</p> <p>10 Q We're going to mark as Exhibit 15 to</p> <p>11 your deposition a set of e-mails in December of</p> <p>12 2001 from -- well, you get copied on some of these</p> <p>13 e-mails, so I'll show you some of these.</p> <p>14 (Martello Deposition Exhibit No. 15 was</p> <p>15 marked for identification.)</p> <p>16 THE WITNESS: Yes, I read it.</p> <p>17 BY MR. OSTOYICH:</p> <p>18 Q Just for the record, it's again a</p> <p>19 document produced by the company's files,</p> <p>20 ZFMA0009332 to 33.</p> <p>21 Now, the top e-mail is an e-mail from</p> <p>22 Dennis Kline, December 13th, 2001, 5:00 p.m., to</p>
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<p>1 it's easier for them to do things that I didn't</p> <p>2 want them to do. So I figured if I just had the</p> <p>3 policy that they had to come to me, what they came</p> <p>4 to me with would be more legitimate than what I</p> <p>5 felt was going on in the past, so --</p> <p>6 Q So Mr. Burmeister says in his e-mail,</p> <p>7 "Comments on policy elimination... This action is</p> <p>8 a severe limitation on our effort to sell</p> <p>9 transmissions in light of our track record</p> <p>10 concerning quality performance."</p> <p>11 Do you see that?</p> <p>12 A Every sales guy wants every type of</p> <p>13 excuse that they can gather, and this is -- you</p> <p>14 know, for a while, they gathered on, well, we</p> <p>15 don't have any sales policy as an excuse.</p> <p>16 Q The excuse that the head of the North</p> <p>17 American field organization at ArvinMeritor is</p> <p>18 providing to us --</p> <p>19 A Yes, because he was getting pressure</p> <p>20 from his sales guys who always had funds available</p> <p>21 to them at their whim.</p> <p>22 Q So what he is telling you at the joint</p>	<p>1 Rick Martello. Subject: Forwarding Heartland</p> <p>2 Express.</p> <p>3 I take it that's an e-mail that you</p> <p>4 received from Mr. Kline at ArvinMeritor on</p> <p>5 December 13, 2001, in the ordinary course of your</p> <p>6 duties as President of ZF Meritor, right?</p> <p>7 A Yes.</p> <p>8 Q And what he did was forward all the</p> <p>9 e-mails below that, which are attached to it,</p> <p>10 right?</p> <p>11 A Uh-huh.</p> <p>12 Q Just so we're clear on the record,</p> <p>13 Mr. Martello, if you could say --</p> <p>14 A Yes, sir.</p> <p>15 Q Okay. So let's work through</p> <p>16 chronologically.</p> <p>17 So the bottom e-mail, which got</p> <p>18 forwarded to you by Mr. Kline, is an e-mail from</p> <p>19 Michael Hayes to Mike Colaccino and Mac</p> <p>20 Whittemore, and those are ArvinMeritor North</p> <p>21 American field organization people, right?</p> <p>22 A Mike Hayes was a field service guy, and</p>

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<p>1 Colaccino was his boss, was Director of one of the 2 regions of ArvinMeritor, yes. 3 Q And they are -- do you know what region 4 he was? 5 A I can't remember. I think it was 6 Northeast, but I can't remember. 7 Q So Mike Hayes is sending an e-mail to 8 his boss, Mike Colaccino, and copying Mac 9 Whittemore and Norm Austin on Heartland Express. 10 He says, "Mike, Mack and Norm, Not sure 11 of the correct procedure to follow so I will copy 12 all. 13 "I have attached four policy request 14 forms for Heartland Express located in 15 Coralville IA." 16 I take it Heartland Express is a fleet 17 customer of the company's? 18 A Yes. 19 Q Give me an idea how big a fleet is 20 Heartland Express? Were they a couple hundred 21 trucks? 22 A Medium size fleet. Not one of the</p>	<p>1 A I don't know from this letter whether he 2 submitted it through the warranty system or as a 3 policy -- as a policy request. 4 He said he's attached four policy 5 request forms, which may mean that he's submitting 6 them as policies because they were denied in 7 warranty. That would be -- that would be what I 8 think this is, yes. 9 Q As a request for policy, they were 10 denied, right? 11 MS. DUNCAN HACKETT: Objection. 12 THE WITNESS: I don't know that. 13 BY MR. OSTOYICH: 14 Q Now, he says in the middle paragraph on 15 that second page, "I understand the financial 16 position of ZF Meritor but feel it is my 17 responsibility to surface this request once again 18 and ensure this is the decision I am to relay to 19 Mr. Gerdin," and that's Russ Gerdin, who is the 20 head of Heartland Express, right? 21 A Yes. "Gerdin." 22 Q "Gerdin" is the way you pronounce it?</p>
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<p>1 largest, and certainly not one of the smallest. 2 Q So medium size would be what, 500 3 trucks? 4 A Probably more than that. 5 Q All right. So Mr. Hayes attaches four 6 policy request forms for Heartland Express located 7 in Coralville, Iowa. "All are for tow bills at 8 low mileage related to G-Platform range shift 9 issues, all four total \$1,352.70. I processed the 10 first request (\$120.00) on Oct 29 and had it 11 returned denied." 12 And I take it that reflects that he 13 asked for policy to cover some of these expenses 14 incurred by Heartland Express related to towing 15 bills related to G platform range shift issues in 16 the fall of 2001, right? 17 MS. DUNCAN HACKETT: Objection. 18 THE WITNESS: Correct. 19 BY MR. OSTOYICH: 20 Q And you or someone under your 21 supervision denied those requests for sales policy 22 funds?</p>	<p>1 A Correct. 2 Q And then in the last paragraph at the 3 bottom, Mr. Hayes says, "On-going G-platform 4 problems have left Russ," and that's Russ Gerdin, 5 the head of Heartland Express, your customer, 6 right? 7 A Correct. 8 Q "On-going G-platform problems have left 9 Russ very frustrated to start with. I feel to 10 jeopardize this account over this amount of money 11 requires review by management a second time to 12 make sure of my direction. 13 "Please advise ASAP," as soon as 14 possible, "and I will forward to fleet." 15 And then Mr. Austin responds on the 16 first page, in the middle of that page, the next 17 day, on December 12th, 2001, and you got a copy of 18 that, you're listed as a CC, in the ordinary 19 course of your duties, right? 20 A Yes. 21 Q Mr. Austin at that point is the regional 22 service manager. He says, "Rosey," and this</p>

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<p>1 Robert Rosenthal, the head of service for the</p> <p>2 ArvinMeritor North American field organization,</p> <p>3 right?</p> <p>4 A Yes. He has something to do -- I don't</p> <p>5 know his exact title, but he has responsibilities</p> <p>6 within the service organization of ArvinMeritor,</p> <p>7 yes.</p> <p>8 Q So Mr. Austin, the Regional Service</p> <p>9 manager, says, "Rosey, The message below from Mike</p> <p>10 is a very serious one. When we talk about units</p> <p>11 failing at the rate of three per day related to a</p> <p>12 known problem, well shame on us for not being</p> <p>13 proactive and changing out the subject parts."</p> <p>14 Do you see that?</p> <p>15 A I see that.</p> <p>16 Q Now, this e-mail, that you get a copy</p> <p>17 of, and Mr. Kline, who is the head of all sales</p> <p>18 and marketing for all products for ArvinMeritor,</p> <p>19 responds up at the top, right?</p> <p>20 A That's correct.</p> <p>21 Q And he's responding directly to you, and</p> <p>22 he's coping Mr. Gosnell, who is the president of</p>	<p>1 disagreement that you, as the President of</p> <p>2 ZF Meritor, had with the ArvinMeritor North</p> <p>3 American sales organization about who should sign</p> <p>4 off and how you should authorize sales policy</p> <p>5 funds for the fiscal year 2002?</p> <p>6 A That's correct.</p> <p>7 Q And --</p> <p>8 A Difference of what was -- how things</p> <p>9 should be handled, that's correct.</p> <p>10 Q And --</p> <p>11 A Understand, specifically under warrant</p> <p>12 policies, it says we do not pay towing. That was</p> <p>13 my position, and that was the position in the</p> <p>14 warranty department on this request.</p> <p>15 Q And that ArvinMeritor salespeople who</p> <p>16 were out there talking to Heartland Express were</p> <p>17 saying we should cover it anyway, in effect, even</p> <p>18 though it's not supposed to be covered under the</p> <p>19 policy?</p> <p>20 A That's correct.</p> <p>21 Q Now, did you subsequently, in response</p> <p>22 to these e-mails from Mr. Kline, did you</p>
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<p>1 the entire heavy vehicle systems business at</p> <p>2 ArvinMeritor, right?</p> <p>3 A That's correct.</p> <p>4 Q And Mr. Gosnell and Mr. Kline are both</p> <p>5 members of the Board of ZF Meritor, right?</p> <p>6 A That's correct.</p> <p>7 Q He says, "Rick - This is exactly the</p> <p>8 kind of thing I was afraid of with your zero \$</p> <p>9 policy plan," and that's a reference to the</p> <p>10 decision you made not to have sales policy funds</p> <p>11 in the budget for the fiscal year 2002, right?</p> <p>12 A They had to go through me for policy,</p> <p>13 yes. It was not in their budget.</p> <p>14 Q And he says, "Russ Gerdin is your</p> <p>15 largest fleet customer. He is extremely volatile</p> <p>16 and emotional. He demands answers and will not</p> <p>17 stand for 'I gotta check with Rick.' We can and</p> <p>18 will lose business in a heartbeat if we continue</p> <p>19 this practice. You/we simply cannot afford this</p> <p>20 risk," right?</p> <p>21 A That's what it says.</p> <p>22 Q So I take it he is reflecting again this</p>	<p>1 subsequently change your policy on the sales</p> <p>2 policy fund at ZF Meritor?</p> <p>3 A I do not believe so. In this particular</p> <p>4 request, I don't remember what the final outcome</p> <p>5 was, if Tom got involved and Dennis got involved</p> <p>6 and they came to me. I don't remember what the</p> <p>7 final outcome. I know my initial stance would</p> <p>8 have been we don't pay for towing.</p> <p>9 Q Fair enough. What about the overall</p> <p>10 policy of not having sales policy funds in the</p> <p>11 budget and requiring the ArvinMeritor sales force</p> <p>12 to get sign-off from you. Did you change that?</p> <p>13 A Again, it wasn't a budget matter as much</p> <p>14 as the fact that they did not have it freely</p> <p>15 available in their budget. They had to come to</p> <p>16 me, and I think you'll see e-mails where they</p> <p>17 have, and I approved them.</p> <p>18 Q Fair enough, but did you change the</p> <p>19 policy so that they went back --</p> <p>20 A Not to my knowledge. Not to my</p> <p>21 knowledge. Not for that year.</p> <p>22 Q All right, we're going to mark as</p>

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<p>1 Exhibit 16 to your deposition a memorandum from 2 Mike Colaccino to Rick Martello and others, 3 Re: Transmission failure rate, and I'm going to 4 ask you to take a look at that. For the record, 5 it's produced from the company's files, 6 ZFMA0000794 to 812. 7 (Martello Deposition Exhibit No. 16 was 8 marked for identification.) 9 THE WITNESS: Okay. 10 BY MR. OSTOYICH: 11 Q All right. You've had a chance to look 12 at Exhibit 16 to your deposition, Mr. Martello? 13 A Yes. 14 Q All right. The first cover page here is 15 a memorandum that Mike Colaccino sent to you, Rick 16 Martello, and the others listed here on March 11, 17 2002, regarding transmission failure rate, and you 18 received that in the ordinary course of your 19 duties as President of the ZF Meritor joint 20 venture, right? 21 A Yes. 22 Q Okay. And then Mike says, "Attached" --</p>	<p>1 these are three of your fleet customers, right? 2 A Yes. 3 Q "Attached is a copy of the road 4 breakdown report provided to Mr. Gerdin on a 5 weekly basis at Heartland. The maintenance staff 6 at all three accounts reports on-going issues with 7 range shifts and top covers." 8 And those are range shifts and top 9 covers for the company's manual 9 and 10-speed 10 transmissions, right? 11 A Yes. 12 Q "All Heartland units have had Air Filter 13 Regulators and Range pistons changed but continue 14 to have several units each week go out of service 15 due to G-Platform problems." 16 Do you see that? 17 A Yes, I see it. 18 Q And those are air filter regulator, 19 range piston, G platform problems on the company's 20 9 and 10-speed manual transmissions, right? 21 A Yes. 22 Q And in my case, it says Crete also is</p>
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<p>1 just for the record, Mike Colaccino is the 2 ArvinMeritor regional sales head, right? 3 A Yes. 4 Q And he's attaching a one-week road 5 breakdown report from Heartland, which is a mid 6 size fleet customer of yours, right? 7 A That's what it says, yes. 8 Q And he's attaching some heartfelt 9 comments from Mike Hayes, the ArvinMeritor 10 national account manager for Heartland, Crete and 11 Ruan, right? 12 A Yes. 13 Q And you received those attachments along 14 with his memorandum in March of 2002, right? 15 A It says that I did, yes. I do not 16 remember this whatsoever. 17 Q Now, the attachments -- it's an internal 18 letter on ArvinMeritor letterhead from Mike Hayes 19 to Mike Colaccino, Subject: National account 20 transmission issues. It says, "Mike, as a follow 21 up to our conversation regarding transmission 22 issues at Heartland, Crete Carriers and Ruan," and</p>	<p>1 becoming frustrated with this issue. 2 Crete is what, a mid size fleet? 3 A It's about the same as Heartland. 4 Q So a couple thousand trucks potentially, 5 somewhere in that range? 6 A Between 500 and 2,000. 7 Q Where are they located, Crete? 8 A Crete's headquarters is in Lincoln, 9 Nebraska, I believe. 10 Q I take it they have national locations? 11 They're listed here as a national account 12 transmission issue. 13 A Yeah. Most of the larger fleets have a 14 national headquarters, and then have different -- 15 what do you want to call them -- maintenance 16 locations in different areas of the country. 17 Q And what about Ruan? How big is Ruan? 18 A About the same. A little bit bigger 19 probably. 20 Q Where are they based? 21 A I don't remember. 22 Q So in the middle of that second</p>

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<p style="text-align: right;">Page 242</p> <p>1 paragraph, Mike Hayes says, "Ruan is now becoming 2 alarmed with an increasing number of the same type 3 of failures and has had lease customers attempt to 4 return units due to repeated G-Platform 5 transmission issues. Ruan has asked to make 6 G-Platform problems part of the up-coming 7 Technology Conference." 8 Now, this -- Mike Colaccino, who is Mike 9 Hayes' boss, then forwards to you with this first 10 page that he wrote to you, right? 11 A Correct. 12 Q And in the middle paragraph on that 13 first page, Mike Colaccino says to you in March of 14 2002, "As you can see from the volume of the 15 document attached if we continue to fix as fail I 16 believe these customers will find another 17 transmission supplier. This could place other 18 components in danger as we have seen what our 19 competition is doing with competitive offers to 20 these end users." 21 Now, what is fix as fail? 22 A Fix as fail, as I said before, is you</p>	<p style="text-align: right;">Page 244</p> <p>1 Heartland, Crete, Ruan, was that if you waited to 2 fix them when they failed, they'd turn to other 3 suppliers? 4 MS. DUNCAN HACKETT: Objection. 5 THE WITNESS: I don't believe any of 6 these ever left our transmissions. 7 BY MR. OSTOYICH: 8 Q Let me just make sure we're clear on the 9 record. 10 But that's what he told you was his 11 belief in March of 2002, was that they could or 12 would, right? 13 A That is what it says right here, yes. 14 Q Now, I take it then that the G platform 15 warranty problems, the air filter regulator and so 16 forth, are continuing in March of 2002. Is that 17 fair? 18 MS. DUNCAN HACKETT: Objection. 19 THE WITNESS: I can't say for sure 20 because the actual document, other than the 21 letter, is not dated. I don't know -- I don't 22 know when these happened, so I can't --</p>
<p style="text-align: right;">Page 243</p> <p>1 tell the person here's the solution, fix it when 2 it fails, rather than bring them all in and fix 3 them. 4 Q Mike Colaccino is advocating, I take it, 5 that you bring them in and fix them all at once 6 without waiting until they fix -- until they fail? 7 MS. DUNCAN HACKETT: Objection. 8 THE WITNESS: I don't know. 9 BY MR. OSTOYICH: 10 Q You do know that he informed you in 11 March of 2002 that he believed, as the sales 12 manager responsible for these accounts, that if 13 you continue to fix as fail, the customers will 14 find another transmission supplier, right? 15 MS. DUNCAN HACKETT: Objection. 16 THE WITNESS: I know what he said there, 17 but I don't know what his alternative is that he 18 wanted -- 19 BY MR. OSTOYICH: 20 Q Fair enough. But you know that he 21 informed you that his belief as the guy 22 responsible for selling these customers,</p>	<p style="text-align: right;">Page 245</p> <p>1 BY MR. OSTOYICH: 2 Q Fair enough. You know that in March of 3 2002, you're continuing to get reports from the 4 ArvinMeritor sales force that they're having 5 problems with the G platform. 6 A That's true. 7 Q Let's mark the July 3rd, 2002 ZF Meritor 8 Board of Directors minutes. 9 (Martello Deposition Exhibit No. 17 was 10 marked for identification.) 11 BY MR. OSTOYICH: 12 Q While you're looking at it, I'll just 13 say it came from the company's files. It's 14 ZFMA0000869 to 77. 15 A Okay. 16 Q This is the ZF Meritor Board of 17 Directors meeting minutes, July 3rd, 2002, of a 18 meeting held at 2135 -- the ArvinMeritor 19 facility -- 2135 West Maple Road, Troy, Michigan, 20 and it says that you were a participant at the 21 request of the Board of Directors, Richard 22 Martello, President of the Company, on the first</p>

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<p>1 page, correct?</p> <p>2 A Correct.</p> <p>3 Q I take it that reflects that in fact</p> <p>4 that you went to the Board of Directors meeting</p> <p>5 and participated in it, right?</p> <p>6 A Yes.</p> <p>7 Q Mr. Martello?</p> <p>8 A Yes.</p> <p>9 Q At that Board of Directors meeting, on</p> <p>10 page 2 it says that there was a G platform</p> <p>11 warranty update presented by Mr. Allen, and that's</p> <p>12 Charlie Allen, your Director of Sales and</p> <p>13 Marketing, right?</p> <p>14 A That's what it says.</p> <p>15 Q I'm sorry, he's the Director of Sales</p> <p>16 and Engineering. He's listed on the first page.</p> <p>17 At some point, did he assume the engineering role</p> <p>18 from Mr. Molde?</p> <p>19 A Yes.</p> <p>20 Q So at this point in mid 1992, Mr. Allen</p> <p>21 is the ZF Meritor Director of Sales and</p> <p>22 Engineering, and he made a presentation on the</p>	<p>1 Again, it came from the company's files,</p> <p>2 ZFMA0000703 to 765, and I'll ask you to take a</p> <p>3 look at that.</p> <p>4 (Martello Deposition Exhibit No. 18 was</p> <p>5 marked for identification.)</p> <p>6 THE WITNESS: Okay.</p> <p>7 BY MR. OSTOYICH:</p> <p>8 Q This is a set of presentation materials</p> <p>9 for this Board meeting you attended in July 2002,</p> <p>10 right?</p> <p>11 A Yes.</p> <p>12 Q And the second page of the document has</p> <p>13 got the agenda, reflects that you were there. It</p> <p>14 says Rick Martello made presentations on old</p> <p>15 business and new business, and it says that</p> <p>16 Mr. Allen, your Director of Sales and Engineering,</p> <p>17 presented a G platform warranty update, and that's</p> <p>18 the one we just saw in the Board minutes, right?</p> <p>19 A I see that he made the presentation. I</p> <p>20 haven't seen the presentation.</p> <p>21 Q Okay, let's look a couple of pages in.</p> <p>22 On page 4 of the document, it says this</p>
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<p>1 G platform warranty --</p> <p>2 A Correct.</p> <p>3 Q -- update to the Board at this meeting?</p> <p>4 A Correct.</p> <p>5 Q It says he presented information in</p> <p>6 graphic form of repairs per 100 transmission,</p> <p>7 scaled against the in-service month.</p> <p>8 Do you see that?</p> <p>9 A Yes, sir.</p> <p>10 Q And I take it that's -- you mentioned</p> <p>11 this morning that there were graphs of repairs</p> <p>12 per 100 units. Is that what you're referring to?</p> <p>13 A That's correct.</p> <p>14 Q Okay. It says Mr. Allen told the Board</p> <p>15 in July of 2002 that early indications are that</p> <p>16 the corrective actions taken with respect to the</p> <p>17 G platform are beginning to show positive results,</p> <p>18 right?</p> <p>19 A That's what it says, yes.</p> <p>20 Q Now, let's look at -- or mark as</p> <p>21 Exhibit 18, this is the presentation at a</p> <p>22 ZF Meritor Board of Directors, July 3rd, 2002.</p>	<p>1 is the Sales and Engineering Report, and Mr. Allen</p> <p>2 was the Director of Sales and Engineering for</p> <p>3 ZF Meritor at the time, right?</p> <p>4 A That's correct.</p> <p>5 Q And it's got an attached set of slides</p> <p>6 here, and these are the slides he presented at the</p> <p>7 Board meeting you attended in July 2002?</p> <p>8 A That's correct.</p> <p>9 Q On page 6, these are the slides you</p> <p>10 presented on the G platform warranty update,</p> <p>11 right?</p> <p>12 A Yes.</p> <p>13 Q On page 7 is the graph that you just</p> <p>14 referred to in the minutes of the Board meeting,</p> <p>15 the transmission warranty performance claims</p> <p>16 through May 2002, repairs per 100 transmission,</p> <p>17 right?</p> <p>18 A That's correct.</p> <p>19 Q Now, am I reading it right, the</p> <p>20 G platform launch occurred in February of 2000?</p> <p>21 There's a flag right in the middle of the page.</p> <p>22 A Correct.</p>

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<p style="text-align: right;">Page 250</p> <p>1 Q And in February through April of 2001, 2 so about a year after that platform was launched, 3 you were experiencing somewhere in the range of 50 4 to 80 repairs for every 100 G platform 5 transmissions in the field, right? 6 A This -- I'm sorry, but I'm trying to 7 remember how this graph actually works, because 8 each line has a number of months in service, I 9 believe. 10 So to answer your question, there is in 11 the launch period of the G platform. And if you 12 look at it compared to the F, which is to the left 13 of this, rates that are higher than in the 14 previous platform, being the F platform, there is 15 a point close to 80, yes. 16 Q And that's around the end of 2001, the 17 beginning of 2002, right? 18 A That is correct. 19 Q 80 repairs for every 100 units in the 20 field for a G platform? 21 A Not unusual for the launch of a product. 22 I think if you looked at Eaton's</p>	<p style="text-align: right;">Page 252</p> <p>1 THE WITNESS: This is -- yes, this is 2 the type of components that we were having 3 problems with on the G platform, yes. 4 BY MR. OSTOYICH: 5 Q So in other words, 33 percent of the 6 warranty claims were coming from top cover/tower 7 problems with the G platform? 8 A Top cover, yes, single-rail top cover, 9 correct. 10 Q 11 percent were coming from air filter 11 regulator claims? 12 A Correct. 13 Q Synchronizer was the source of 14 10 percent of the warranty claims related to the 15 G platform? 16 A That's what it says, yes. 17 Q Range piston, 14 percent? 18 A Yes. 19 Q Shift knob, another 6 percent? 20 A That's what it says, yes. 21 Q And then there's a catchall, I take it, 22 "Other," so there were other problems that were</p>
<p style="text-align: right;">Page 251</p> <p>1 warranty data, you would see that on certainly 2 things like the AutoShift and the Lightning. 3 Q That's something we'll deal with 4 separately, but I want to make sure I'm reading 5 the graph rate. 6 For your G platform, at the end of 2001, 7 the beginning of 2002, you were having 80 repairs 8 per 100 units in the field, right? 9 MS. DUNCAN HACKETT: Objection. 10 THE WITNESS: As I say, I don't know -- 11 don't remember exactly how these cumulative 12 numbers are. Charlie Allen would be the best 13 person to ask. 14 There is a number around 80, and I 15 believe that's what it means, yes. 16 BY MR. OSTOYICH: 17 Q Let's look at the next page, the 18 warranty costs by component and subassembly. I 19 take it this is a listing of the various major 20 problems that the G platform was having causing 21 warranty claims, right? 22 MS. DUNCAN HACKETT: Objection.</p>	<p style="text-align: right;">Page 253</p> <p>1 causing 26 percent of the claims? 2 A Yes. 3 Q And then the next page breaks that down 4 and says the top five G platform performance 5 issues, top five subassemblies, it says top cover, 6 air filter regulator, range piston, shift knob, 7 synchronizer. So this is just a listing of these 8 top five problems? 9 A Same as the previous page. 10 Q It says these issues address 74 percent 11 of the G platform warranty cost, which leaves the 12 other 26 percent, which is this catchall "Other" 13 category, right? 14 A Correct. 15 Q It's got on the next page after that, 16 "G Platform Corrective Actions" that the company 17 is taking or plans to take, right? 18 A Correct. 19 Q The synchronizer, it says corrective 20 action assessment is pending, and the status is 21 testing, so I take it that's still in the works -- 22 A Correct.</p>

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<p style="text-align: right;">Page 254</p> <p>1 Q -- in July 2002?</p> <p>2 A That's correct.</p> <p>3 Q Range piston, corrective action</p> <p>4 assessment is strong, the status is testing. Same</p> <p>5 thing, still in the works in July 2002?</p> <p>6 A Correct.</p> <p>7 Q Shift knob, it says pending, and the</p> <p>8 status is hold. I take it that was on hold in</p> <p>9 July 2002?</p> <p>10 MS. DUNCAN HACKETT: Objection.</p> <p>11 THE WITNESS: That is what the chart</p> <p>12 says. I don't remember the specific situation for</p> <p>13 the shift knob.</p> <p>14 Again, it's a launch of a product.</p> <p>15 Compared to the F platform, it was having</p> <p>16 problems.</p> <p>17 BY MR. OSTOYICH:</p> <p>18 Q Is the F platform the one that had that</p> <p>19 bearing recall, the bearing issue?</p> <p>20 A No. It was a generation or two after</p> <p>21 the bearing problem.</p> <p>22 Q Let me make sure, because you joined the</p>	<p style="text-align: right;">Page 256</p> <p>1 So prior to the left-hand part of this</p> <p>2 graph here was the transmission series that was</p> <p>3 recalled as the bearing problem?</p> <p>4 A I would -- at the time we had the</p> <p>5 recall -- at the time of the recall, it was</p> <p>6 certainly left to the graph.</p> <p>7 Q And then you had the F series, which is</p> <p>8 the beginning of this graph here in the '97 time</p> <p>9 period to ninety --</p> <p>10 A I know it is the period closest to the</p> <p>11 G. I don't remember how far F went back.</p> <p>12 Q Fair enough. This is the transmission</p> <p>13 family before the G platform launch was '97 to</p> <p>14 '99, somewhere in that time range?</p> <p>15 A That's correct.</p> <p>16 Q And that was experiencing somewhere in</p> <p>17 the 30 to 40 percent repairs per hundred units,</p> <p>18 and then it sort of averaged out, it looks like</p> <p>19 around 30, and then went down in '98 and '99 to</p> <p>20 about 20, 15 to 20, right?</p> <p>21 A Yes, over 750,000 mile, 36-month</p> <p>22 history, yes.</p>
<p style="text-align: right;">Page 255</p> <p>1 transmission division at Rockwell in mid '95,</p> <p>2 right --</p> <p>3 A Yes.</p> <p>4 Q -- as the General Manager?</p> <p>5 And you were finishing up the recall on</p> <p>6 the manual transmissions at the time, right?</p> <p>7 A Yes.</p> <p>8 Q And this chart here begins in 1997.</p> <p>9 A Yes.</p> <p>10 Q So you finished up the recall of the</p> <p>11 prior generation of transmissions sometime in</p> <p>12 what, late '95, early '96?</p> <p>13 A '96, yes.</p> <p>14 Q And was there a generation between '96</p> <p>15 and '97, or is this data here reflective of</p> <p>16 whatever came after the recall?</p> <p>17 A That's the F platform, which is after</p> <p>18 the recall. I don't remember. Because I had just</p> <p>19 joined, I don't remember what the letter</p> <p>20 designations were previous.</p> <p>21 Q Fair enough. Let me just make sure I</p> <p>22 understand.</p>	<p style="text-align: right;">Page 257</p> <p>1 Q And then G platform is introduced at the</p> <p>2 beginning of 2000, right?</p> <p>3 A That's what that graph will tell you,</p> <p>4 yes.</p> <p>5 Q I just want to ask you a question.</p> <p>6 On page 23 of this, it's got some</p> <p>7 figures on 2003 to 2007, Market Volume Summary.</p> <p>8 A Uh-huh.</p> <p>9 Q To the left, where it says "Total" in</p> <p>10 the middle, and it's got the first, second and</p> <p>11 third quarter, I take it that's the 2002 figures</p> <p>12 there, the fiscal year 2002?</p> <p>13 A 2003, I believe, yeah.</p> <p>14 Q 2003, I'm sorry.</p> <p>15 So in other words, if I'm reading it</p> <p>16 right, the company, during fiscal year 2003, which</p> <p>17 goes from the fall of 2002 to the fall of 2003 --</p> <p>18 A Yes.</p> <p>19 Q -- the company sold 16,000 G platform</p> <p>20 manual transmissions?</p> <p>21 A See, if this was in July of '02, we</p> <p>22 would have been in the -- we would have been in</p>

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<p>1 the fourth quarter, so it would have been the</p> <p>2 first three-quarters actual, and the last quarter</p> <p>3 estimate.</p> <p>4 Q So the estimate for the first</p> <p>5 three-quarters, and then you've got the estimate,</p> <p>6 it adds up to 16,000 manual G transmissions?</p> <p>7 A Correct.</p> <p>8 Q Mr. Martello, we're going to mark as</p> <p>9 Exhibit 19 to your deposition a notice dated</p> <p>10 August 29th, 2002, by ZF Friedrichshafen AG and</p> <p>11 others, produced by the company from its files,</p> <p>12 ZFMA0001953, and on the second page is a fax cover</p> <p>13 sheet reflecting that it was -- a copy was faxed</p> <p>14 to ZF Meritor LLC, President. I'll ask you to</p> <p>15 take a look at that.</p> <p>16 (Martello Deposition Exhibit No. 19 was</p> <p>17 marked for identification.)</p> <p>18 THE WITNESS: Yes, sir.</p> <p>19 BY MR. OSTOYICH:</p> <p>20 Q This is a fax on the letterhead of</p> <p>21 Hunter &amp; Schank, a law firm, that was faxed to</p> <p>22 ZF Meritor LLC, attention to the President of</p>	<p>1 to believe you didn't get this, do you?</p> <p>2 A To the best of my knowledge, those are</p> <p>3 not my fax numbers. I'd have to go back and look,</p> <p>4 but --</p> <p>5 Q This is a notice signed by</p> <p>6 ZF Friedrichshafen AG's attorney, and</p> <p>7 ZF AG Holding's attorney, dated August 29th, 2002.</p> <p>8 This is ZF --</p> <p>9 A All I'm saying is this the general</p> <p>10 counsel -- it went to the general counsel with a</p> <p>11 copy to Miller, Canfield. Kent Shafer, I don't</p> <p>12 even know why he would be around.</p> <p>13 All I can tell you is I don't remember</p> <p>14 getting this fax, and I don't remember this at</p> <p>15 all. I see what it says, but I don't remember it.</p> <p>16 Q Do you remember ZF/AG forming the</p> <p>17 company that it had a claim for breach of the</p> <p>18 Asset Transfer Agreement for --</p> <p>19 A Honestly, I do not remember that, no.</p> <p>20 Q Let me finish my question, Mr. Martello.</p> <p>21 Do you remember that they filed a claim</p> <p>22 for breach for failure of Meritor HVS or Meritor</p>
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<p>1 ZF Meritor LLC -- and that's you, right, at this</p> <p>2 time in mid 2002?</p> <p>3 A Yes.</p> <p>4 Q And this is a fax you received in the</p> <p>5 ordinary course of your duties as the President of</p> <p>6 the company in August of 2002, right?</p> <p>7 A I don't remember ever seeing this</p> <p>8 document.</p> <p>9 Q You don't have any reason to doubt that</p> <p>10 you received this fax that says it was sent to</p> <p>11 ZF Meritor, to the attention of the President of</p> <p>12 ZF Meritor LLC, do you?</p> <p>13 A Where do you see that it was sent?</p> <p>14 Q On the second page is a fax cover sheet</p> <p>15 from Hunter &amp; Schank, and it's got a To line, to</p> <p>16 Meritor Heavy Vehicle Systems, LLC, Attention</p> <p>17 General Counsel, and then below that it says Copy.</p> <p>18 The third copy, ZF Meritor LLC, Attention</p> <p>19 President.</p> <p>20 A Yeah, I see that, but I don't remember</p> <p>21 ever seeing it.</p> <p>22 Q Fair enough. You don't have any reason</p>	<p>1 Sub to adequately design and test transmission</p> <p>2 products prior to the sales of transmissions?</p> <p>3 MS. DUNCAN HACKETT: Objection.</p> <p>4 THE WITNESS: No, I do not remember</p> <p>5 that.</p> <p>6 BY MR. OSTOYICH:</p> <p>7 Q Do you remember that ZF/AG submitted a</p> <p>8 claim against the company for damages in the form</p> <p>9 of diminution of value of their membership</p> <p>10 interest for several million?</p> <p>11 A No, I do not remember that.</p> <p>12 Q But you do remember that ZF, AG and</p> <p>13 Meritor ended up in a dispute over warranty</p> <p>14 expenses related to the joint venture, right?</p> <p>15 MS. DUNCAN HACKETT: Objection.</p> <p>16 THE WITNESS: I don't remember that</p> <p>17 either. I was not part of any dispute claims</p> <p>18 between the two companies other than normal</p> <p>19 disagreements on things in Board of Directors</p> <p>20 meetings.</p> <p>21 It looks like it happened, but I</p> <p>22 don't -- I was not part of it, and I don't</p>

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<p style="text-align: right;">Page 262</p> <p>1 remember this at all.</p> <p>2 MR. OSTOYICH: We're going to change the</p> <p>3 tape, so let's take a break.</p> <p>4 THE VIDEOGRAPHER: Going off the record.</p> <p>5 This is the end of tape 4. The time is 2:50 p.m.</p> <p>6 (A break was taken.)</p> <p>7 THE VIDEOGRAPHER: Back on record. This</p> <p>8 is Tape No. 5. The time is 2:56 p.m.</p> <p>9 BY MR. OSTOYICH:</p> <p>10 Q We're going to mark as the next exhibit</p> <p>11 to your deposition, 20, ZF Meritor LLC Board of</p> <p>12 Directors Meeting Minutes, November 12th, 2002.</p> <p>13 This is about six months later. Again produced by</p> <p>14 the company from its files, ZFMA0186297 to 310.</p> <p>15 I'll ask you to take a look at that.</p> <p>16 (Martello Deposition Exhibit No. 20 was</p> <p>17 marked for identification.)</p> <p>18 THE WITNESS: Okay.</p> <p>19 BY MR. OSTOYICH:</p> <p>20 Q I take it this reflects the ZF Meritor</p> <p>21 LLC Board of Directors Meeting Minutes,</p> <p>22 November 12th, 2002. It says that Rick Martello,</p>	<p style="text-align: right;">Page 264</p> <p>1 Do you see that?</p> <p>2 A Correct.</p> <p>3 Q And I take it, Mr. Martello, that the</p> <p>4 Deloitte &amp; Touche auditors discussed at that Board</p> <p>5 meeting in November 2002 the potential need to</p> <p>6 write down various G platform transmission assets</p> <p>7 and other asset valuation matters, right?</p> <p>8 A It says -- item three says that, yes.</p> <p>9 Q In fact, that was a presentation</p> <p>10 provided at the Board meeting you attended in</p> <p>11 November 2002, right?</p> <p>12 A That's correct.</p> <p>13 Q And Deloitte &amp; Touche presented to the</p> <p>14 Board that there are certain preconditions,</p> <p>15 number five down there, for issuance of a clean</p> <p>16 opinion with respect to the 2002 financial</p> <p>17 statements, is that right?</p> <p>18 A Yes.</p> <p>19 Q And what's a clean opinion?</p> <p>20 MS. DUNCAN HACKETT: Objection.</p> <p>21 THE WITNESS: I don't know exactly what</p> <p>22 the words mean.</p>
<p style="text-align: right;">Page 263</p> <p>1 President of the company, participated in that</p> <p>2 meeting in Laurinburg, North Carolina, at the</p> <p>3 ZF Meritor facility?</p> <p>4 A That's true.</p> <p>5 Q On the second page, it's got a section</p> <p>6 CFO Report, Auditor's Report, and it says that</p> <p>7 Mr. Coleman -- now, Mr. Coleman was the chief</p> <p>8 financial officer of ZF Meritor at that time?</p> <p>9 A That's correct.</p> <p>10 Q And Mr. Coleman initiated the Auditor's</p> <p>11 Report by introducing to the Board two</p> <p>12 representatives from Deloitte &amp; Touche, Mike</p> <p>13 Desmond and Michael Zagora; is that right?</p> <p>14 A Correct.</p> <p>15 Q Deloitte &amp; Touche, I take it they were</p> <p>16 the company's auditors at the time?</p> <p>17 A That's correct.</p> <p>18 Q It says the Deloitte &amp; Touche</p> <p>19 representatives discussed at that Board meeting in</p> <p>20 November 2002 five matters that will affect the</p> <p>21 content -- the form and content of the fiscal year</p> <p>22 2002 financial statements of the company.</p>	<p style="text-align: right;">Page 265</p> <p>1 BY MR. OSTOYICH:</p> <p>2 Q It's an opinion from your auditors that</p> <p>3 the company's financial reporting is clean, right?</p> <p>4 MS. DUNCAN HACKETT: Objection.</p> <p>5 THE WITNESS: I don't know what exactly</p> <p>6 what the words mean.</p> <p>7 BY MR. OSTOYICH:</p> <p>8 Q Am I right, Mr. Martello, that Deloitte</p> <p>9 &amp; Touche, your auditors, told the Board in</p> <p>10 November 2002 they would only provide a clean</p> <p>11 opinion with respect to the 2002 financial</p> <p>12 statements if you met a precondition that the</p> <p>13 members ArvinMeritor and ZF/AG will commit to</p> <p>14 financially support the company for at least one</p> <p>15 year plus one day?</p> <p>16 A That's correct.</p> <p>17 Q Now, a few pages further in it says</p> <p>18 that -- on page 5 of these minutes it says that</p> <p>19 Mr. Allen, up at the top, was the Director of</p> <p>20 Sales and Marketing of Engineering of the company,</p> <p>21 reviewed monthly warranty statistics, and they're</p> <p>22 reflected in Exhibit K, am I right?</p>

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<p style="text-align: right;">Page 266</p> <p>1 A Yes.</p> <p>2 Q It says Mr. Allen reported on the</p> <p>3 transmission warranty performance rainbow chart,</p> <p>4 which is attached to these minutes as Exhibit K,</p> <p>5 right?</p> <p>6 A That's what it says.</p> <p>7 Q And if we look on the very last page of</p> <p>8 this, there's an Exhibit K, and it says</p> <p>9 transmission warranty performance claims through</p> <p>10 October 2002, right?</p> <p>11 A Correct.</p> <p>12 Q Left-hand column says repairs per</p> <p>13 100 transmissions, right?</p> <p>14 A Yes.</p> <p>15 Q Now, on the bottom it says per</p> <p>16 in-service month. This is the rainbow chart</p> <p>17 that's referenced in the minutes?</p> <p>18 A I can't read all this. It's so small, I</p> <p>19 can't read what those numbers are, so --</p> <p>20 Q Fair enough. I'm not asking you</p> <p>21 specific numbers, but this is the graph that was</p> <p>22 presented --</p>	<p style="text-align: right;">Page 268</p> <p>1 that results could be tracked as FreedomLine is</p> <p>2 rolled out. Do you see that?</p> <p>3 A Yes.</p> <p>4 Q I take it the Board directed him, the</p> <p>5 Director of Sales and Marketing of Engineering of</p> <p>6 ZF Meritor, to do that after this Board meeting in</p> <p>7 November 2002?</p> <p>8 MS. DUNCAN HACKETT: Objection.</p> <p>9 THE WITNESS: That's correct.</p> <p>10 BY MR. OSTOYICH:</p> <p>11 Q You'll be happy to hear, Mr. Martello,</p> <p>12 that I'm going to jump ahead to the July 15th,</p> <p>13 2003, ZF Meritor Board meeting, again produced by</p> <p>14 your lawyers, ZFMA0019956 to 20003. I'm going to</p> <p>15 ask you to take a look at this.</p> <p>16 (Martello Deposition Exhibit No. 21 was</p> <p>17 marked for identification.)</p> <p>18 THE WITNESS: Yes, sir.</p> <p>19 BY MR. OSTOYICH:</p> <p>20 Q Mr. Martello, just let me know when</p> <p>21 you've had a chance to flip through it. I'll</p> <p>22 point you to some specific pages, obviously.</p>
<p style="text-align: right;">Page 267</p> <p>1 A This is a graph presented, yes.</p> <p>2 Q -- at that Board meeting in November</p> <p>3 2002, right?</p> <p>4 A That's correct.</p> <p>5 Q Now, you can see at least with me that</p> <p>6 there were times in the middle of that graph where</p> <p>7 the repairs per 100 transmissions in the field</p> <p>8 exceed 100, right?</p> <p>9 A Correct.</p> <p>10 Q On page 5 of this, of the minutes,</p> <p>11 there's a section about halfway down, it says</p> <p>12 FreedomLine Review.</p> <p>13 A Yes.</p> <p>14 Q And it says that Mr. Allen was directed</p> <p>15 to design a rainbow chart, and that's the kind of</p> <p>16 chart we just looked at, right?</p> <p>17 A Yes.</p> <p>18 Q Graphing out repairs, warranty claims</p> <p>19 per 100 units of transmissions, right?</p> <p>20 A Yes.</p> <p>21 Q It says Mr. Allen was directed to design</p> <p>22 a rainbow chart specifically for FreedomLine so</p>	<p style="text-align: right;">Page 269</p> <p>1 A Yes, I accept the fact that this is the</p> <p>2 presentation made at that Board meeting.</p> <p>3 Q Okay. So this is a presentation at the</p> <p>4 July Board meeting that you attended as President</p> <p>5 of ZF Meritor, right?</p> <p>6 A That is correct.</p> <p>7 Q On the second page it's got a list of</p> <p>8 the agenda for the meeting. There's some opening</p> <p>9 remarks by Mr. Vogel. He's a Board member from</p> <p>10 ZF/AG, right?</p> <p>11 A He was the Chairman of the Board at the</p> <p>12 time, yes.</p> <p>13 Q And then it says there were acceptance</p> <p>14 of minutes from the March 2003 Board meeting by</p> <p>15 Mr. Hawley, right?</p> <p>16 A Correct.</p> <p>17 Q And if we look a few pages in, the</p> <p>18 page that's the fourth page of the document, it</p> <p>19 then has a section on the ZF Meritor, March 20th,</p> <p>20 2003 meeting minutes, right?</p> <p>21 A Give me the page number at the bottom.</p> <p>22 Q It's the fourth page of the document, or</p>

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<p style="text-align: right;">Page 270</p> <p>1 959.</p> <p>2 A 959?</p> <p>3 Q Uh-huh.</p> <p>4 A My 959 is just a --</p> <p>5 Q Yeah, it's a section. It says</p> <p>6 ZF Meritor, March 20, 2003 Meeting Minutes, and</p> <p>7 then subsequent to that it's got the minutes from</p> <p>8 that meeting, right?</p> <p>9 A Correct.</p> <p>10 Q And you attended the Board meeting in</p> <p>11 March of 2003 as President of ZF Meritor, right?</p> <p>12 A Yes.</p> <p>13 Q And at that Board meeting, if you look a</p> <p>14 couple pages into it, Mr. Allen, there's a page on</p> <p>15 page 4 of those minutes, it says Old Business?</p> <p>16 A Yes.</p> <p>17 Q It says, "Mr. Allen was then called upon</p> <p>18 to discuss certain matters of old business. He</p> <p>19 provided a warranty report update, which included</p> <p>20 a G Platform Warranty Performance rainbow chart</p> <p>21 (attached to these Minutes as Exhibit G.)"</p> <p>22 Do you see that?</p>	<p style="text-align: right;">Page 272</p> <p>1 A Yes.</p> <p>2 Q Okay. This is the rainbow graph of the</p> <p>3 G platform warranty performance claims through</p> <p>4 January of that year, 2003, right?</p> <p>5 A That's what it says, yes.</p> <p>6 Q So we see again the same graph that's</p> <p>7 got the G platform launch, and then it's got 80</p> <p>8 repairs per 100 transmissions in the field a</p> <p>9 little bit to the right of that, right?</p> <p>10 A Yes.</p> <p>11 Q And then it goes down to about 50,</p> <p>12 right?</p> <p>13 MS. DUNCAN HACKETT: Objection.</p> <p>14 THE WITNESS: Yeah, it goes down, but I</p> <p>15 can't read the bottom. I don't know what the</p> <p>16 dates are, so --</p> <p>17 BY MR. OSTOYICH:</p> <p>18 Q You can read across on the side, and the</p> <p>19 black line goes down to about 50 repairs per every</p> <p>20 100 units in the field for the G platform, right?</p> <p>21 A About the seventh page -- seventh one</p> <p>22 down, yes.</p>
<p style="text-align: right;">Page 271</p> <p>1 A Uh-huh.</p> <p>2 Q "and various warranty corrective actions</p> <p>3 that have been taken (or are in process) with</p> <p>4 respect to 9 &amp; 10 speed transmissions," correct?</p> <p>5 A Correct.</p> <p>6 Q And that reflects that he made a</p> <p>7 presentation at the Board meeting you attended in</p> <p>8 March of 2003 where he presented a rainbow chart</p> <p>9 of G platform warranty performance, right?</p> <p>10 A Yes.</p> <p>11 Q And a list of the corrective actions</p> <p>12 that either had been taken or were still in</p> <p>13 progress in March of 2003, right?</p> <p>14 A Yes.</p> <p>15 Q Now let's look a few pages in, and the</p> <p>16 last two digits are 72. Do you see where I am?</p> <p>17 It should say ZF Meritor Board meeting,</p> <p>18 March 20th, 2003, in the upper right-hand corner,</p> <p>19 right?</p> <p>20 A 927, Exhibit G.</p> <p>21 Q This is the Exhibit G that Mr. Allen</p> <p>22 presented at the meeting you attended, right?</p>	<p style="text-align: right;">Page 273</p> <p>1 Q Then it spikes back up to about 60</p> <p>2 repairs for every hundred units in the field for</p> <p>3 the G platform manual transmissions, right?</p> <p>4 A No. That's the last point on here. I</p> <p>5 don't know where you get that.</p> <p>6 Q See where I am, Mr. Martello? Read the</p> <p>7 left-hand column. It says repairs per 100</p> <p>8 transmissions.</p> <p>9 A Yeah, I know the chart. I just said if</p> <p>10 you go over from one, two, three, four, five,</p> <p>11 six -- between six and seven black dots, that's</p> <p>12 the best I can do from the right, that top line</p> <p>13 comes down below 50, and it never -- below 60, and</p> <p>14 it never goes up again, so I don't know where --</p> <p>15 where you're coming from.</p> <p>16 Q I want to make sure we're reading it</p> <p>17 right. So it goes up to 80, and then it comes</p> <p>18 down to 50, right?</p> <p>19 A You're talking the black line?</p> <p>20 Q Black line.</p> <p>21 A Yes.</p> <p>22 Q And then it goes back up to 60?</p>

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<p style="text-align: right;">Page 274</p> <p>1 A Yes.</p> <p>2 Q And then it comes back down to about</p> <p>3 between 30 and 40 repairs for every hundred units</p> <p>4 in the field, right?</p> <p>5 A Yes.</p> <p>6 Q And then it goes down to a little bit</p> <p>7 under 30 repairs for every hundred units in the</p> <p>8 field?</p> <p>9 A Yes.</p> <p>10 Q And then it goes back up to about 30 at</p> <p>11 the end of that?</p> <p>12 A Yes. It shows continued improvement</p> <p>13 down the chart once the problems -- once the</p> <p>14 implementation of things.</p> <p>15 Q Now, let's look back at the front.</p> <p>16 After this presentation from the March</p> <p>17 2003 Board minutes, then there was the</p> <p>18 presentation for the July 2003 meeting itself,</p> <p>19 right?</p> <p>20 A Yes.</p> <p>21 Q If you look at the end on the first</p> <p>22 page.</p>	<p style="text-align: right;">Page 276</p> <p>1 this was a section of the Board minutes that</p> <p>2 R. Martello presented in July 2003, right?</p> <p>3 A Old business/new business I presented.</p> <p>4 Q And one of the items of old business</p> <p>5 that you presented was the FreedomLine sales and</p> <p>6 warranty update on that page 96, right?</p> <p>7 A It was on my -- I presented this chart,</p> <p>8 but I would imagine that Charlie Allen actually</p> <p>9 presented the data. I would never have tried to</p> <p>10 explain Charlie's charts.</p> <p>11 Q Fair enough. And one of the items of</p> <p>12 old business that you presented, and maybe</p> <p>13 Mr. Allen as well, was the G platform warranty</p> <p>14 update, right?</p> <p>15 A I see the FreedomLine chart.</p> <p>16 MR. HOLCOMB: Which page is that?</p> <p>17 MR. OSTOYICH: 96, on the Old Business</p> <p>18 line first.</p> <p>19 THE WITNESS: 001, is that the one</p> <p>20 you're talking about?</p> <p>21 BY MR. OSTOYICH:</p> <p>22 Q Well, that's the actual graph. I was on</p>
<p style="text-align: right;">Page 275</p> <p>1 A Yes.</p> <p>2 Q Okay. And as part of the July 2003</p> <p>3 presentation, there was an update on the</p> <p>4 G platform warranty performance graph, right?</p> <p>5 A Yeah. I believe that's what we were</p> <p>6 looking at.</p> <p>7 Q Well, we were looking at the March 2003.</p> <p>8 Now I'm going to ask you to look at the July 2003,</p> <p>9 which is on page 32. Actually, let's start on</p> <p>10 page 27.</p> <p>11 MS. DUNCAN HACKETT: What's the Bates</p> <p>12 number?</p> <p>13 THE WITNESS: Give me the bottom number</p> <p>14 that you're using.</p> <p>15 BY MR. OSTOYICH:</p> <p>16 Q 96 are the last two digits.</p> <p>17 A 96?</p> <p>18 Q Yep.</p> <p>19 A July? Old Business?</p> <p>20 Q Yeah.</p> <p>21 A Okay.</p> <p>22 Q And old business on the agenda says that</p>	<p style="text-align: right;">Page 277</p> <p>1 a different page, but, yes, you presented as part</p> <p>2 of the old business update to the Board in July of</p> <p>3 2003 this graph on G platform transmission total</p> <p>4 warranty performance, adjusted claims through May</p> <p>5 2003, right?</p> <p>6 A Yeah, I presented the -- a lot of these</p> <p>7 old business and new business, I would always</p> <p>8 present -- I would always present the agenda for</p> <p>9 them. If it was things that I didn't particularly</p> <p>10 feel comfortable presenting, like warranty graphs,</p> <p>11 Charlie actually did the presentation.</p> <p>12 Q Fair enough. So you introduced</p> <p>13 Mr. Allen, and then he presented the graph that's</p> <p>14 on page 00 --</p> <p>15 A Yeah, he would -- he would -- he would</p> <p>16 explain the graph, yes.</p> <p>17 Q All right. So now let's turn to</p> <p>18 page 001. This is the graph Mr. Allen presented</p> <p>19 at the Board meeting you attended in July 2003.</p> <p>20 A Yes.</p> <p>21 Q And, again, we see the spike of 80</p> <p>22 repairs for 100 units for the G platform in the</p>

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<p>1 middle of that graph, right?</p> <p>2 A Uh-huh.</p> <p>3 Q And it goes down to 50, right?</p> <p>4 A Uh-huh.</p> <p>5 Q Then back up to 60 repairs for every</p> <p>6 hundred units, right?</p> <p>7 A Uh-huh.</p> <p>8 Q And it comes down to 30, right?</p> <p>9 A Uh-huh.</p> <p>10 THE REPORTER: Say yes, please.</p> <p>11 THE WITNESS: Yes.</p> <p>12 BY MR. OSTOYICH:</p> <p>13 Q Back up to 40 repairs for every hundred</p> <p>14 units?</p> <p>15 A Approximately.</p> <p>16 Q And it comes down a little bit below 30,</p> <p>17 right?</p> <p>18 A Yes.</p> <p>19 Q And it goes back up to just under 50</p> <p>20 repairs for every hundred units, right?</p> <p>21 A Yes.</p> <p>22 Q And then it comes down and levels out</p>	<p>1 THE WITNESS: First of all, when you're</p> <p>2 talking about per hundred units, I don't know how</p> <p>3 many units were actually out in the field. So</p> <p>4 when you're doing a per hundred units, this is the</p> <p>5 extreme launch -- shorting launch period of the</p> <p>6 FreedomLine.</p> <p>7 And if you remember, we said we were</p> <p>8 going to have an initial launch, and then full</p> <p>9 production, and this is during the launch period,</p> <p>10 and until I -- unless I knew how many units were</p> <p>11 in the market -- if I knew how many units were in</p> <p>12 the market, I could better understand this chart.</p> <p>13 BY MR. OSTOYICH:</p> <p>14 Q This graph --</p> <p>15 A And that's the reason that Charlie</p> <p>16 probably had it zero to 400 is there wasn't very</p> <p>17 many units in the market, and it was the initial</p> <p>18 launch of the product.</p> <p>19 Q Now, the title of this one at the top of</p> <p>20 the graph says this is the FreedomLine</p> <p>21 Transmission Total Warranty Performance, Claims</p> <p>22 Through May 2003, Removed Influence of the GS3 and</p>
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<p>1 between 30 and 40 repairs for every hundred units</p> <p>2 in May of 2003, right?</p> <p>3 A That particular chart, yes, that graph,</p> <p>4 yes.</p> <p>5 Q Now, you also introduced Mr. Allen, I</p> <p>6 take it, and he presented the graph on the</p> <p>7 FreedomLine total warranty performance claims?</p> <p>8 A I would say that's probably true.</p> <p>9 Q Let's look back at page 99.</p> <p>10 A Yes.</p> <p>11 Q And these are the -- this is the graph</p> <p>12 he presented at that Board meeting in July of</p> <p>13 2003?</p> <p>14 A Looks to be, yes.</p> <p>15 Q And it looks like from the graph that</p> <p>16 was presented to the Board of Directors,</p> <p>17 ZF Meritor, in July 2003, the FreedomLine</p> <p>18 transmission total warranty performance claims</p> <p>19 through May 2003, that there were at times between</p> <p>20 250 and 300 warranty claims for every hundred</p> <p>21 FreedomLine units in the field?</p> <p>22 MS. DUNCAN HACKETT: Objection.</p>	<p>1 &amp; Clutch Actuator Retrofits, right?</p> <p>2 A Yes.</p> <p>3 Q So this is -- I take it there were</p> <p>4 retrofits for the GS3?</p> <p>5 A Yes.</p> <p>6 Q Some trucks were brought in and taken</p> <p>7 out of service to retrofit the GS3?</p> <p>8 A I'm not sure what that means, because we</p> <p>9 had a period of time where we retrofitted some of</p> <p>10 the ones in-house because of the supply chain. We</p> <p>11 retrofitted some before we went out.</p> <p>12 I'm not sure if that means that or not,</p> <p>13 but we did not have a so-called recall ever of the</p> <p>14 FreedomLine to bring things in and retrofit, so --</p> <p>15 Q Fair enough. There was a retrofit of</p> <p>16 certain --</p> <p>17 A Yes.</p> <p>18 Q -- FreedomLine units for GS --</p> <p>19 A Yes.</p> <p>20 Q What's GS3?</p> <p>21 A Off the top of my head, I can't</p> <p>22 remember.</p>

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<p>1 Q Okay. But it's a component that was</p> <p>2 causing problems --</p> <p>3 A Yes.</p> <p>4 Q -- you just had to retrofit it in the</p> <p>5 FreedomLine transmission, fair?</p> <p>6 A Yes.</p> <p>7 Q And also because of clutch actuator</p> <p>8 problems with the FreedomLine, there's a retrofit?</p> <p>9 A That's what it says, yes.</p> <p>10 Q So taking those out, those were removed</p> <p>11 from this graph, right?</p> <p>12 A Yes. And like I say, I believe the</p> <p>13 retrofit means the ones we did internally.</p> <p>14 Q So those aren't reflected in the graph.</p> <p>15 So the graph just reflects the other units without</p> <p>16 the retrofitted parts?</p> <p>17 A Correct.</p> <p>18 Q And it looks like the product is</p> <p>19 introduced to the market in the -- mid 2001,</p> <p>20 right? It looks like June 2001, right?</p> <p>21 A The first -- yeah, the first in-service</p> <p>22 month that's on here is 2001.</p>	<p>1 Q Is that your handwriting, Mr. Martello?</p> <p>2 A No, it's not.</p> <p>3 Q Do you recognize that handwriting?</p> <p>4 A No, I don't.</p> <p>5 Q Now, let's look at the next page,</p> <p>6 FreedomLine -- Current FreedomLine Performance</p> <p>7 Issues, and this reflects that there are current</p> <p>8 FreedomLine performance issues in July of 2003,</p> <p>9 right?</p> <p>10 MS. DUNCAN HACKETT: Objection.</p> <p>11 THE WITNESS: Would you repeat the</p> <p>12 question, please?</p> <p>13 BY MR. OSTOYICH:</p> <p>14 Q Sure. The title of this page at the</p> <p>15 Board meeting in July 2003 says "Current</p> <p>16 FreedomLine Performance Issues." I take it this</p> <p>17 reflects that there were, in July 2003, current</p> <p>18 FreedomLine performance issues, right?</p> <p>19 MS. DUNCAN HACKETT: Same objection.</p> <p>20 THE WITNESS: No. You've got to read</p> <p>21 the total thing. It says performance issues, top</p> <p>22 six from engineering field test and/or production.</p>
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<p>1 Q Then am I reading it right that by the</p> <p>2 end of 2001, the beginning of 2002, there were --</p> <p>3 the graph reflects 250 to 300 repairs for every</p> <p>4 hundred FreedomLine transmissions in the field?</p> <p>5 A It reflects two and a half repairs for</p> <p>6 every one out there, yes.</p> <p>7 Q 250 to 300 for every hundred units out</p> <p>8 there were repaired?</p> <p>9 A Yes, but I don't even think there was</p> <p>10 300 out there. That's why I'm saying what I'm</p> <p>11 saying is --</p> <p>12 Q And that comes down by May of 2003,</p> <p>13 which is when the graph ends, right?</p> <p>14 A Yes.</p> <p>15 Q That comes down to 100 repairs for every</p> <p>16 hundred FreedomLine in the field, right?</p> <p>17 A That's where this graph ends, yes.</p> <p>18 Q Now, there's a little handwritten note</p> <p>19 to the right of that. It says, "So</p> <p>20 100 repairs/100 units 12 months in service as of</p> <p>21 March 2003." Do you see that?</p> <p>22 A That's correct.</p>	<p>1 BY MR. OSTOYICH:</p> <p>2 Q Gotcha. This reflects that the top</p> <p>3 six --</p> <p>4 A From engineering field test and/or</p> <p>5 production are listed below, yes.</p> <p>6 Q So there are other performance issues</p> <p>7 with the FreedomLine. This is just the top six,</p> <p>8 right, from the engineering field test and/or</p> <p>9 production?</p> <p>10 A Yes.</p> <p>11 Q Multiple symptoms is number one, right?</p> <p>12 MS. DUNCAN HACKETT: Objection.</p> <p>13 THE WITNESS: GS3, yes.</p> <p>14 BY MR. OSTOYICH:</p> <p>15 Q And then number two, it says harsh</p> <p>16 engagement/shift was a performance issue with the</p> <p>17 FreedomLine transmission in July 2003, right?</p> <p>18 A Yes.</p> <p>19 Q Then the number three performance issue</p> <p>20 with the FreedomLine transmission was zero voltage</p> <p>21 doubler capacitor?</p> <p>22 A It was three points -- yeah. The</p>

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<p>1 voltage capacitor, as I said before, we had to</p> <p>2 change the voltage because in Europe it's 24 volts</p> <p>3 and this is 12. That was the capacitor that was</p> <p>4 used to change the voltage.</p> <p>5 Q It was causing performance issues with</p> <p>6 the FreedomLine in the field, correct?</p> <p>7 A That's what it says.</p> <p>8 Q The number four performance issue with</p> <p>9 the FreedomLine in the field was multiple</p> <p>10 symptoms, ZMTEC. What's that?</p> <p>11 A ZMTEC is an electronic unit that's on</p> <p>12 it.</p> <p>13 Q The number five item causing performance</p> <p>14 issues with the FreedomLine transmission in the</p> <p>15 field was -- says no symptom, C/S bearing cups.</p> <p>16 What's that?</p> <p>17 A Countershaft bearing cups.</p> <p>18 Q I take it that was causing performance</p> <p>19 issues in the field with the FreedomLine?</p> <p>20 MS. DUNCAN HACKETT: Objection.</p> <p>21 THE WITNESS: If you look at the first</p> <p>22 column, it says the field situation for that one</p>	<p>1 page 33 --</p> <p>2 A Which one?</p> <p>3 Q It's the second to last page of the</p> <p>4 document.</p> <p>5 A G platform issues is the --</p> <p>6 Q Yeah. I take it at this Board meeting</p> <p>7 of ZF Meritor that you attended as the President</p> <p>8 of the company in July 2003, these G platform</p> <p>9 issues were presented, right?</p> <p>10 A That's correct.</p> <p>11 Q And it's got a list of subassembly</p> <p>12 components that were causing problems with the</p> <p>13 G platform at that time, right?</p> <p>14 A That's correct.</p> <p>15 MS. DUNCAN HACKETT: Objection.</p> <p>16 BY MR. OSTOYICH:</p> <p>17 Q Then it's got the corrective action</p> <p>18 status in the middle of the page for each of</p> <p>19 those?</p> <p>20 A That's correct.</p> <p>21 Q Now, it looks like, for example, shift</p> <p>22 knob guardian, the corrective action status was</p>
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<p>1 is stabilized.</p> <p>2 BY MR. OSTOYICH:</p> <p>3 Q The last one --</p> <p>4 A So it was a technical issue that the</p> <p>5 engineers were still looking at.</p> <p>6 See the little stoplights?</p> <p>7 Q Yeah. So you're pointing out that that</p> <p>8 one says it had stabilized in July of 2003?</p> <p>9 A It is stabilized at this presentation.</p> <p>10 Q So if I'm reading it right, so if I look</p> <p>11 back up at the --</p> <p>12 A It says three --</p> <p>13 Q It's frequent in July 2003, the</p> <p>14 stoplights?</p> <p>15 A The first three are, yes.</p> <p>16 Q And then the sixth of the top six</p> <p>17 FreedomLine performance issues in July 2003, it</p> <p>18 says no air pressure, floating valves. What was</p> <p>19 that?</p> <p>20 A The shift mechanism required air.</p> <p>21 Q Let's look a few pages forward. We saw</p> <p>22 the G platform graph, and then it's got on</p>	<p>1 still in process in the middle of 2003, right?</p> <p>2 A Guarding is the name of a company that</p> <p>3 we were buying the shift knobs from. Parkers, the</p> <p>4 person we switched to because of the problem.</p> <p>5 Q I take it the shift knob fixes are still</p> <p>6 in process in mid 2003, right?</p> <p>7 A Yes. We were changing vendors, yes.</p> <p>8 Q And it looks like you're aiming for</p> <p>9 fixing those or switching vendors from Guardian in</p> <p>10 September 2003 to Parker at the end of the year?</p> <p>11 A I believe that's what it means, yes.</p> <p>12 Q And then it says below that the neutral</p> <p>13 switch. What was that problem with the G platform</p> <p>14 transmissions?</p> <p>15 A It's listed there. It's an</p> <p>16 investigation. I don't know from this whether it</p> <p>17 was causing severe or any warranty problems in the</p> <p>18 field. All I know is it says they were</p> <p>19 investigating neutral switches and output shaft</p> <p>20 seals.</p> <p>21 Q So those are still in the mid 2003 time</p> <p>22 period, you're still investigating those and</p>

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<p style="text-align: right;">Page 290</p> <p>1 they're ongoing?</p> <p>2 A July 15th, 2003, that is correct, but I</p> <p>3 believe if you looked at any date of any</p> <p>4 presentation, we're always looking to improve the</p> <p>5 product and looking at issues.</p> <p>6 Q We're going to mark as the next exhibit</p> <p>7 to your deposition, Mr. Martello, an e-mail -- set</p> <p>8 of e-mails that you're copied on from Joe Mejaly</p> <p>9 and others. It came from the company's files,</p> <p>10 ZFMA0000623 to 625, and I'm going to ask you to</p> <p>11 take a look at that.</p> <p>12 (Martello Deposition Exhibit No. 22 was</p> <p>13 marked for identification.)</p> <p>14 THE WITNESS: Okay.</p> <p>15 BY MR. OSTOYICH:</p> <p>16 Q All right, Mr. Martello, you've had a</p> <p>17 chance to look at Exhibit 22 to your deposition,</p> <p>18 right?</p> <p>19 A Yes.</p> <p>20 Q Okay. The top e-mail on the first</p> <p>21 page is an e-mail from Joe Mejaly to Michael</p> <p>22 Veillette, with a copy to Rick Martello, among</p>	<p style="text-align: right;">Page 292</p> <p>1 transmission customer of the ZF Meritor joint</p> <p>2 venture?</p> <p>3 A I am not extremely knowledgeable about</p> <p>4 Marathon Ashland Petroleum LLC. I am not. It's</p> <p>5 not a -- it's not a fleet that I recognize the</p> <p>6 name of.</p> <p>7 Q Fair enough. You recognize it's a</p> <p>8 customer of the company, you just don't know much</p> <p>9 about it, is that fair?</p> <p>10 A Yeah, I would believe it's a customer</p> <p>11 from the letters, but I don't know much about it,</p> <p>12 though.</p> <p>13 Q The last e-mail in this trail, which</p> <p>14 chronologically it's the first one, is an e-mail</p> <p>15 from Larry Gitt to David Eaton at ArvinMeritor.</p> <p>16 David Eaton was the ArvinMeritor sales rep out in</p> <p>17 the field, right?</p> <p>18 A That's correct.</p> <p>19 Q And it's an e-mail dated November 14,</p> <p>20 2003. Subject: Transmission issues. And</p> <p>21 Mr. Gitt, the manager of equipment and maintenance</p> <p>22 at Marathon Ashland Petroleum, says, "Dave, Due to</p>
<p style="text-align: right;">Page 291</p> <p>1 others, related to transmission issues.</p> <p>2 A Right.</p> <p>3 Q I take it you received a copy of that on</p> <p>4 November 17th, 2003, right?</p> <p>5 A That's what it says, yes.</p> <p>6 Q And you received a copy of the e-mail</p> <p>7 below it, which he's responding to from Michael</p> <p>8 Veillette to Joe Mejaly, CC to Rick Martello,</p> <p>9 transmission issues, right?</p> <p>10 A That's what it says, yes.</p> <p>11 Q And that was forwarding the e-mails at</p> <p>12 the end of page 1, going to page 2 and 3, were a</p> <p>13 series of e-mails back and forth between Joe</p> <p>14 Mejaly and others, and Larry Gitt at Marathon</p> <p>15 Ashland Petroleum, right?</p> <p>16 A Yes.</p> <p>17 Q You received all of those in the</p> <p>18 ordinary course of your responsibilities as the</p> <p>19 President of ZF Meritor LLC, right?</p> <p>20 A It says I did, yes.</p> <p>21 Q Okay. Now, tell me a little bit about</p> <p>22 Marathon Ashland Petroleum. I take it that was a</p>	<p style="text-align: right;">Page 293</p> <p>1 Meritor's continued rejection of warranty due to</p> <p>2 their design problems on the 'G' platform</p> <p>3 transmissions, I feel that I have to reconsider my</p> <p>4 supplier for axles, transmissions, differentials</p> <p>5 and brakes." Do you see that?</p> <p>6 A Yeah, I see it, yes.</p> <p>7 Q And then a little bit below that, he</p> <p>8 says, "You, Quentin and the other service reps</p> <p>9 that we deal with on a day to day basis do a great</p> <p>10 job, but it appears that corporate is not willing</p> <p>11 to acknowledge that this new transmission has</p> <p>12 serious problems. The claims are being denied due</p> <p>13 to Meritor's claim of driver abuse and as you know</p> <p>14 we have little to no driver turnover (less than</p> <p>15 5%) with most of our drivers having over 20 years</p> <p>16 service. This being said we never had</p> <p>17 transmission problems with the older RMT style</p> <p>18 transmission and have nothing but problems with</p> <p>19 the G platform transmission," right?</p> <p>20 A Correct, that's what it says.</p> <p>21 MR. HOLCOMB: You say "right" at the end</p> <p>22 of reading something. I don't know what that</p>

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<p style="text-align: right;">Page 294</p> <p>1 means.</p> <p>2 MR. OSTOYICH: Don't --</p> <p>3 MR. HOLCOMB: But I'm asking you what --</p> <p>4 MR. OSTOYICH: No. She's defending the</p> <p>5 deposition. You get one person to defend. You're</p> <p>6 not. One person gets to speak.</p> <p>7 THE REPORTER: I can only take one at a</p> <p>8 time.</p> <p>9 MR. HOLCOMB: You read a long paragraph,</p> <p>10 and you say "right" at the end of it. I mean, is</p> <p>11 he supposed to be saying whether you read it</p> <p>12 correctly?</p> <p>13 MR. OSTOYICH: One person gets to defend</p> <p>14 the deposition.</p> <p>15 MR. HOLCOMB: You should make -- I'll</p> <p>16 tell the witness. Make sure if you say -- don't</p> <p>17 just say right if he says right. If you mean he</p> <p>18 read it correctly, say he read it correctly.</p> <p>19 Don't just say "right" because we don't know what</p> <p>20 is correct.</p> <p>21 THE WITNESS: I agree. You have read it</p> <p>22 correctly, yes.</p>	<p style="text-align: right;">Page 296</p> <p>1 before.</p> <p>2 MR. OSTOYICH: Right. I'm going to</p> <p>3 bring in a second person and have two people ask</p> <p>4 questions. Do you want to do that?</p> <p>5 MR. HOLCOMB: I don't care. As long as</p> <p>6 you don't ask them at the same time, I don't care.</p> <p>7 MR. OSTOYICH: The rule is one person,</p> <p>8 not two.</p> <p>9 MR. HOLCOMB: I'd like you to show me</p> <p>10 that rule.</p> <p>11 MR. OSTOYICH: I guarantee Judge</p> <p>12 Robinson is not going to let two people stand up</p> <p>13 at trial and question one witness.</p> <p>14 MR. HOLCOMB: Okay. Do you want to use</p> <p>15 your time like this, or do you want to use it for</p> <p>16 the purpose of questioning?</p> <p>17 BY MR. OSTOYICH:</p> <p>18 Q Now, your customer at Marathon, Larry</p> <p>19 Gitt at Marathon, asks you, says in the next</p> <p>20 paragraph, "I feel that with this transmission</p> <p>21 issue your company has turned their back on us and</p> <p>22 the industry in supplying less than superior</p>
<p style="text-align: right;">Page 295</p> <p>1 MR. OSTOYICH: Who's defending the</p> <p>2 deposition? Which one of you?</p> <p>3 MR. HOLCOMB: Both of us are.</p> <p>4 MR. OSTOYICH: No, you're not both</p> <p>5 defending the deposition.</p> <p>6 MR. HOLCOMB: She's defending, and I'm</p> <p>7 making comments.</p> <p>8 THE REPORTER: One at a time, please.</p> <p>9 MR. OSTOYICH: She's defending it,</p> <p>10 you're flitting in and out and being a pest. Stop</p> <p>11 it. It's a violation of the local rules.</p> <p>12 MR. HOLCOMB: Okay. I've said what I</p> <p>13 said.</p> <p>14 MR. OSTOYICH: Good. Don't say it again</p> <p>15 because you're not on the record in the</p> <p>16 deposition.</p> <p>17 MR. HOLCOMB: Don't count on it. We'll</p> <p>18 see what happens.</p> <p>19 MR. OSTOYICH: Well, then, she should be</p> <p>20 quiet and you should speak. One of you gets to</p> <p>21 defend, not two.</p> <p>22 MR. HOLCOMB: We went through this once</p>	<p style="text-align: right;">Page 297</p> <p>1 components. I will be finishing up my final</p> <p>2 specifications for my 2004 tractor order in the</p> <p>3 next six weeks and will decide who the vendor will</p> <p>4 be for my driveline components during this time</p> <p>5 frame. I would suggest that Meritor consider how</p> <p>6 they plan to handle our transmission issues going</p> <p>7 forward and let me know if they want to continue</p> <p>8 the 30+ year partnership we've enjoyed in the</p> <p>9 past."</p> <p>10 Now, Mr. Eaton then forwards this to</p> <p>11 Mr. Destefano and Mr. Austin at ArvinMeritor, and</p> <p>12 they're regional managers for ArvinMeritor sales</p> <p>13 force, right?</p> <p>14 A Carmen Destefano is, yes.</p> <p>15 Q He says, "This the most upset I have</p> <p>16 ever seen Larry Gitt. In my opinion he makes some</p> <p>17 good points. I have called on Larry for over</p> <p>18 15 years, he has known many of our engineers and</p> <p>19 has spoken very highly of this company for</p> <p>20 many years, from the father of the disc brake</p> <p>21 Wayne French on down. This is just the tip of the</p> <p>22 iceberg in my opinion. Larry is not the only one</p>

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<p>1 to feel this way," and he identifies Rick 2 Lorenzoni at Celadon, and says he had very similar 3 reservations on the continued use of Meritor 4 components. Do you see that? 5 A You read it correctly. 6 Q And who is Rick Lorenzoni at Celadon? I 7 take it Celadon is a fleet customer of yours? 8 A Celadon is a fleet customer. I do not 9 know Rick Lorenzoni. 10 Q Give me an idea about Celadon. Are they 11 a big fleet? Small fleet? 12 A Medium size. 13 MS. DUNCAN HACKETT: Objection. 14 BY MR. OSTOYICH: 15 Q Medium size meaning hundreds of trucks? 16 A Hundreds, yes. 17 Q Now, it says Celadon asked why they have 18 had three transmission failures denied this past 19 week. They claim they were told they had improper 20 driveline angels. Rick does not buy that 21 explanation. It has -- it says his question is 22 simple, if driveline angles have caused the</p>	<p>1 A They fill out warranty claims and send 2 them in, yes. 3 Q Was that a ZF Meritor warranty program, 4 or was that an ArvinMeritor? 5 A ArvinMeritor. 6 Q Now, in response to Mr. Eaton's e-mail 7 to Mr. Destefano and Mr. Austin, there's an e-mail 8 up at the top, ultimately which -- well, it starts 9 at the bottom of the first page. It's from Joe 10 Mejaly. Who is Joe Mejaly at that time in 11 November of 2003? 12 A He was -- he was the guy that was the 13 head of -- he certainly was head of the OnTrac 14 system. I don't know if at the time he was head 15 of all of service or not. 16 Q For ArvinMeritor? 17 A For ArvinMeritor, correct. 18 Q So Mr. Mejaly then sends an e-mail to 19 Charles Allen and Michael Veillette. It says, 20 "Guys, We have to dimension the G platform shift 21 fork exposure and move quickly." 22 Now, what's the shift fork exposure on</p>
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<p>1 problem, why am I not having pinion bearing, 2 pinion seal, u-joint problems as well? 3 Now, Mr. Eaton then takes this and tells 4 Mr. Destefano, "In my opinion we have to look at 5 the root causes of problems, if we are correct and 6 they take the business elsewhere, so be it. But 7 the bottom line is we have some issues that need 8 to be investigated. Many customers are not happy 9 with the answers they get from ONTRAC. Something 10 has changed, we need to address the cause and 11 react." 12 Now, what was OnTrac? 13 A OnTrac was a new warranty system that 14 was adopted. 15 Q And what sort of a warranty system was 16 it that was adopted? 17 A It was a new warranty system. 18 Q Was it an electronic warranty system 19 where customers of yours filled out warranty 20 claims -- 21 A That is correct. 22 Q -- on the Internet?</p>	<p>1 the G platform transmission? 2 A I don't know what the exact exposure of 3 the shift fork was, but what it would mean is 4 something to do with -- as it says, with the 5 financial exposure for the warranty system. 6 Q Let me try it a different way. 7 What is the shift fork of the G platform 8 manual transmissions? 9 A A shift fork is a part that goes into a 10 transmission. 11 Q And it was causing problems at Marathon 12 and other customers, and Mr. Mejaly, who is the 13 head of service, is saying let's figure out if 14 this is a system-wide problem and figure out what 15 the exposure to the company is, right? 16 MS. DUNCAN HACKETT: Objection. 17 THE WITNESS: That's what he says, yes. 18 BY MR. OSTOYICH: 19 Q And then Mr. Veillette responds to that 20 and copied you on the first page, right? 21 A Yes. 22 Q He says there were 21,364 generation 2</p>

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<p>1 single rail top cover, and I take it that's 21,000  2 generation 2 G platform transmissions out there  3 with a single rail top cover, right?  4 A That's correct.  5 Q It says the estimated failure rate due  6 to collar wear is 11 percent, right?  7 A He doesn't say that there is an  8 estimated failure rate. He's saying he used  9 11 percent in his calculation as the estimated  10 failure rate.  11 Q And at an average repair cost of \$1,500  12 each, that would be financial exposure of  13 \$3.5 million to the company?  14 A Yes. Mike Veillette was strictly a  15 person that did calculations. He's a statistical  16 type of person.  17 Q I take it, Mr. Martello, in November  18 2003, you're still saying customer complaints  19 about what is now generation 2 of the G platform  20 transmission, right?  21 MS. DUNCAN HACKETT: Objection.  22 THE WITNESS: As stated in here, most of</p>	<p>1 from Larry Gitt at Marathon relative to  2 frustrations over the Gen 2 failures..." That's  3 the failures of the Generation 2 G platform manual  4 transmissions, right?  5 A Which? Excuse me, but which? Again, in  6 the Gitt letter, said were turned down because of  7 driver abuse.  8 Q Now, Mr. Mejaly says, "We are seeing  9 this problem growing at an accelerated rate of  10 fleets. No distinct pattern can be seen.  11 Customers that have supported us (Celadon, Knight,  12 Crete, Heartland, to name just a few) are seeing  13 the repetitiveness of this failure and are  14 frustrated by our current response that is  15 associated with 'driver error,'" right?  16 A Yes, that's what it says.  17 Q Now, this is right around the time when  18 the joint venture dissolved?  19 A Excuse me?  20 Q The joint venture decided to dissolve in  21 the fall of 2003, right?  22 A I honestly don't remember when the</p>
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<p>1 these problems, or at least the reason for the  2 letters, was that they were turned down under the  3 warranty system as operator error.  4 So if you included operator error as a  5 problem with everything in the country, we would  6 have a thousand percent warranty because I don't  7 consider that as a warranty problem unless it's  8 verified that it was a product problem and not an  9 operator error problem, and at this point in time,  10 only -- this document only directs me to believe  11 it was an operator error problem.  12 BY MR. OSTOYICH:  13 Q Let's look at Mr. Colaccino's response  14 at the top of the first page to Mr. Veillette --  15 A Yes.  16 Q -- which you received a copy of it,  17 right?  18 A From Mejaly to -- from Joe to Mike, yes,  19 okay.  20 Q CC, Rick Martello. That's you, correct?  21 A Correct.  22 Q "Thanks Mike. Attached is an e-mail</p>	<p>1 discussions started or stopped, but it could be,  2 yes.  3 Q And at this time, the fall of 2003, late  4 fall of 2003, you're still seeing failures of the  5 Generation 2 G platform, right?  6 MS. DUNCAN HACKETT: Objection.  7 THE WITNESS: You have to repeat your  8 question because I truthfully didn't hear you. So  9 if she heard you, that was fine, but I didn't.  10 BY MR. OSTOYICH:  11 Q Fair enough. Can you read that one back  12 for me?  13 (The reporter read back the record.)  14 MS. DUNCAN HACKETT: Same objection.  15 THE WITNESS: I believe that this letter  16 indicates a difference of opinion on whether it  17 was a problem associated with the G2 failure or it  18 was an operator error failure, and I can't tell  19 that without more documentation than what I have  20 right here.  21 BY MR. OSTOYICH:  22 Q Fair enough. First, you were still</p>

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<p>1 seeing failures of the Generation 2 G platform, 2 and the question is what they were caused by, 3 right, but you were seeing failures in November of 4 2003 of the Generation 2 G platform manual 5 transmissions, right? 6 A That is what this says, yes. 7 Q And the question is what was it caused 8 by, and your belief was it was caused by driver 9 error, right? 10 A My belief is stated that the warranty 11 people said that it was caused by driver error. 12 Q And Mr. Mejaly -- who is the head of 13 service for ArvinMeritor, right? 14 A Head of the OnTrac system as well as 15 service, yes. 16 Q -- says that the problem is growing at 17 an accelerated rate at fleets, right? 18 A That's what he says, yes. 19 Q And he says no distinct pattern can be 20 seen, right? 21 A That's what it says, yes. 22 Q And he says the customers that have</p>	<p>1 (Martello Deposition Exhibit Nos. 23 and 2 24 were marked for identification.) 3 MR. OSTOYICH: Is this all one exhibit? 4 MS. DUNCAN HACKETT: No. The e-mail is 5 23, and the attachment is 24. 6 THE WITNESS: Yes, sir. 7 BY MR. OSTOYICH: 8 Q Okay. Exhibit 23 is the e-mail from 9 Kathleen McAvoy. I take it she was your 10 assistant? 11 A That's correct. 12 Q And she sent this e-mail at your request 13 under your signature, under your name, Rick 14 Martello, President, ZF Meritor LLC, to Tom 15 Gosnell and Wolfgang Vogel in April 2003, right? 16 A I would say yes to that, yes. 17 Q And at that time, Tom Gosnell and 18 Wolfgang Vogel were the Board members of 19 ZF Meritor LLC? 20 A They were both Board members at the 21 time, yes. 22 Q And this is an e-mail you wrote in the</p>
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<p>1 supported you, Celadon, Knight, and he lists a few 2 others, are seeing the repetitiveness of this 3 failure, right? 4 A That's what it says, yes. 5 Q And they're frustrated by our current 6 response that it's associated with driver error, 7 right? 8 A That's what it says, yes. It doesn't 9 quote how many problems. It doesn't quote 10 anything other than exactly what you read. 11 Q Do you remember offhand how many 12 Generation 2 failures you were experiencing in 13 this period in late 2003? 14 A No. No, sir. 15 Q I'm going to mark as Exhibit 23, 16 Mr. Martello, an e-mail from Kathleen McAvoy on 17 behalf of Rick Martello, President of ZF Meritor 18 LLC, to Tom Gosnell and Wolfgang Vogel in April 19 2003. I'm going to ask you to take a look at 20 that. 21 A Sure. 22</p>	<p>1 ordinary course of your responsibilities as the 2 President of the company, right? 3 A Correct. 4 Q The subject is ZF Meritor Product Line. 5 You say, "I am sending you a copy of a product 6 line presentation that I hoped to present to the 7 Board of Directors. Unfortunately, I believe that 8 the decision on an appropriate product line for 9 the J.V. has been decided by default." 10 And if I look at the next exhibit, 11 Mr. Martello, 24, this is a product presentation 12 on -- product presentation. In the upper 13 right-hand corner, it's ZFM Product Presentation, 14 April 14th, 2003, PowerPoint, it says RM. 15 That's Rick Martello, right? 16 A Yes. 17 Q This is the product presentation that 18 you attached to the e-mail and you intended to 19 present at the Board meeting of ZF Meritor in 20 April 2003, right? 21 A It is, yes. It is a presentation that I 22 had put together, and as it says, had hoped to</p>

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<p>1 present to them, but it was never presented.</p> <p>2 Q It's a presentation you hoped to present</p> <p>3 on the appropriate product line for the joint</p> <p>4 venture, right?</p> <p>5 A Much more to do with it than just the</p> <p>6 appropriate product line.</p> <p>7 Q But that's one of the items you hoped to</p> <p>8 present?</p> <p>9 A That's one of the items, yes.</p> <p>10 Q And this presentation related in part to</p> <p>11 your ongoing belief that the company needed to</p> <p>12 offer a full line of transmission products to be a</p> <p>13 viable supplier, right?</p> <p>14 MS. DUNCAN HACKETT: Objection.</p> <p>15 THE WITNESS: As I've stated every time</p> <p>16 you've asked me that question, it is my belief</p> <p>17 that it was necessary to offset the OEMs' belief</p> <p>18 that they would get punitive pricing from Eaton if</p> <p>19 they tried to switch.</p> <p>20 BY MR. OSTOYICH:</p> <p>21 Q You've said -- you're right, you have</p> <p>22 said that every time I've asked you, and every</p>	<p>1 zero. You didn't overhear any communications</p> <p>2 related to pricing of any transmission?</p> <p>3 A I never heard -- I never overheard any</p> <p>4 communication between Eaton and anybody about</p> <p>5 pricing.</p> <p>6 Q And your basis for all of your comments</p> <p>7 today about threats by Eaton is one communication</p> <p>8 with one guy at Mack?</p> <p>9 A One communication with one guy at Volvo,</p> <p>10 and numerous discussions with ArvinMeritor people.</p> <p>11 Q Okay. So you were talking to other</p> <p>12 ArvinMeritor people, and you were all telling each</p> <p>13 other that you believed Eaton had said something</p> <p>14 to OEMs, right?</p> <p>15 MS. DUNCAN HACKETT: Objection.</p> <p>16 BY MR. OSTOYICH:</p> <p>17 Q Right?</p> <p>18 A When you say "right," what is it --</p> <p>19 Q Right. You were talking to other</p> <p>20 ArvinMeritor --</p> <p>21 A I was talking to other ArvinMeritor</p> <p>22 people.</p>
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<p>1 time I've had to come back and pick at it and see</p> <p>2 if you have any basis for it.</p> <p>3 A And every time I've given you the same</p> <p>4 answer, yes.</p> <p>5 Q Which is you heard from people who</p> <p>6 heard --</p> <p>7 A That is correct. I believe it was</p> <p>8 certainly common knowledge within our business,</p> <p>9 and I've heard it from --</p> <p>10 Q Just so we're clear --</p> <p>11 A I've heard it from one -- two people</p> <p>12 individually at the OEMs, and numerous people</p> <p>13 within our -- within the ArvinMeritor</p> <p>14 organization.</p> <p>15 Q Sure. You guys at ArvinMeritor were</p> <p>16 going around in circles saying this is what we</p> <p>17 believe about what Eaton is saying to the OEMs?</p> <p>18 A I don't believe anybody went around in</p> <p>19 circles. I believe people heard it from other</p> <p>20 people and repeated it.</p> <p>21 Q Let's make sure. Your firsthand</p> <p>22 knowledge of any Eaton discussion with any OEM is</p>	<p>1 Q And all of you were telling each other</p> <p>2 that you each believed that Eaton had said</p> <p>3 something to OEMs?</p> <p>4 MS. DUNCAN HACKETT: Objection.</p> <p>5 THE WITNESS: We each said that we had</p> <p>6 heard something from somebody about Eaton</p> <p>7 threatening pricing actions at OEMs, yes.</p> <p>8 BY MR. OSTOYICH:</p> <p>9 Q And the only thing you heard was from</p> <p>10 the fellow at Mack, right?</p> <p>11 A And the fellow at Volvo.</p> <p>12 Q And the fellow at Mack said some</p> <p>13 unidentified person at Eaton said something to</p> <p>14 him, right?</p> <p>15 MS. DUNCAN HACKETT: Objection.</p> <p>16 THE WITNESS: I've answered this</p> <p>17 question. I said the gentleman at Mack in</p> <p>18 conversations told me one of the reasons that he</p> <p>19 could not follow through on our agreement was that</p> <p>20 Eaton had threatened a lawsuit against him on the</p> <p>21 patent infringement of their 13 and 18-speed if</p> <p>22 they sold it, and had threatened them with</p>

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<p style="text-align: right;">Page 314</p> <p>1 price -- additional pricing on products that we 2 couldn't -- we didn't have a match for in their 3 product line. 4 BY MR. OSTOYICH: 5 Q And that relates to your effort to buy 6 the Mack product line back in 1996 and '97, right? 7 A Yes, it did, that particular 8 conversation, yes. 9 Q And were there other conversations with 10 the Mack fellow? 11 A No. I'm just saying that particular 12 conversation took time -- took that time frame. 13 Q Fair enough. And then your only other 14 conversation, you had a conversation with 15 Mr. Moore at Volvo? 16 A Correct. 17 Q And when did that occur? 18 A I would have to say I don't remember, 19 but it would have been sometime between '98 and 20 2001, somewhere in that neighborhood. 21 Q Mr. Moore retired from Volvo somewhere 22 in the early 2000 period, right?</p>	<p style="text-align: right;">Page 316</p> <p>1 Q Now, let me go back to the document you 2 wrote here, because you wrote to Mr. Gosnell and 3 Mr. Vogel, on the Board of Directors of your 4 company -- 5 A Yes. 6 Q -- in April 2003 was that you 7 continually discuss the elimination of the manual 8 transmissions from the ZF Meritor product line, 9 right? 10 A That's what this statement says, yes. 11 Q And why were you continually discussing 12 eliminating the manual transmissions from the 13 ZF Meritor product line? 14 A Well, we discussed during this period of 15 time every conceivable option that we had in the 16 marketplace. One of the discussions was about 17 only offering the FreedomLine AMTs, strictly being 18 an AMT niche market player. That was one of the 19 options, as well as options on full product lines, 20 as well as partnerships with TTC. 21 We had -- you know, as most good 22 companies and boards do, they discuss every</p>
<p style="text-align: right;">Page 315</p> <p>1 MS. DUNCAN HACKETT: Objection. 2 THE WITNESS: I don't know. 3 BY MR. OSTOYICH: 4 Q Fair enough, but the best you can tell 5 me today is the conversation with Mr. Moore 6 occurred sometime in the '98 to 2001 period? 7 A That's correct. 8 Q And Mr. Moore told you he was concerned 9 about Eaton raising prices on products that you 10 didn't offer, right? 11 A He said he was concerned -- after 12 discussions with Eaton, that he was concerned 13 about it. Yes, that's what he said. 14 Q But he didn't tell you that anyone from 15 Eaton had threatened to do that, right? 16 A He did not say anybody had threatened 17 him, no. 18 Q And he did not tell you that anybody 19 from Eaton had actually raised prices on their 20 products to Volvo, right? 21 A He did not say that anybody had raised 22 prices.</p>	<p style="text-align: right;">Page 317</p> <p>1 option, business option they have, so that was the 2 discussion. 3 Q So you -- was it repeatedly over time 4 that you had discussed with the Board of 5 ZF Meritor eliminating the manual transmissions? 6 A No. That was just towards this period 7 of time. 8 Q After the problems with the G platform? 9 A It had nothing to do with G platform. 10 MS. DUNCAN HACKETT: Objection. 11 BY MR. OSTOYICH: 12 Q I didn't ask you if it had anything to 13 do with it, but it was after the problems with the 14 G platform transmissions? 15 MS. DUNCAN HACKETT: Objection. 16 THE WITNESS: I -- I don't -- I would 17 say it was in the time frame of early '03 to 18 middle '03, yes. 19 BY MR. OSTOYICH: 20 Q That's after we saw some of the spikes 21 up to 80 repairs per hundred G platform manual 22 transmissions in the field, right?</p>

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<p>1 A It was probably after Bush was elected 2 President, but, I mean, there's no real -- I mean, 3 you can connect any two lines if you work hard 4 enough, but -- 5 Q Fair enough. And one of the lines I'm 6 connecting is that you discussed eliminating the 7 manual transmissions after you had a lot of 8 warranty defects with them, correct? 9 A That is the line you're connecting. 10 Q And it is an accurate historical line. 11 After you had those problems, you discussed 12 eliminating the manual transmissions from your 13 offerings? 14 MS. DUNCAN HACKETT: Objection. 15 THE WITNESS: It is a legitimate line 16 that you're connecting. 17 BY MR. OSTOYICH: 18 Q And, in fact, the company subsequently 19 stopped -- 20 A In fact, I don't believe there's a lot 21 of connection with the two. I believe the 22 connection was more towards the financial health</p>	<p>1 was unable to sell as many G platform 2 transmissions as you expected? 3 A We did not sell as many transmissions in 4 total as we'd like to, whether it be -- as we 5 needed to to be a viable business, that's true. 6 Q Now, from day one, when you formed the 7 joint venture, you expected your manual 8 transmission sales to decline, right? We saw 9 that? 10 A Correct. 11 Q And, in fact, they did decline, right? 12 A That's correct. 13 Q And they declined more steeply than you 14 expected, right? 15 A They declined more steeply than we 16 expected from the initial -- from the initial 17 projection. 18 Q And you had -- 19 A And that had many, many reasons for it, 20 not one. 21 Q And we looked at some of those reasons 22 earlier, right, the Board presentation when you</p>
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<p>1 of the total company. 2 Q And part of the financial health of the 3 company was unexpected warranty claims in the 4 G platform, right? 5 MS. DUNCAN HACKETT: Objection. 6 THE WITNESS: It was -- the main health 7 reason for the company was we could never generate 8 enough volume. That was the main thing in the -- 9 the main problem we had. 10 I don't think the warranty was -- I 11 certainly don't think warranty was the biggest 12 problem. I think generation of volume was the 13 problem. 14 BY MR. OSTOYICH: 15 Q You agree with me that the warranty -- 16 unexpected several million dollars worth of 17 warranty claims in the G platform was a 18 contributor to the financial health of the 19 company? 20 A Everything that took money out of the 21 business was a contributor, yes. 22 Q And you say lack of volume. The company</p>	<p>1 saw, among other things, cutoff of competitive 2 equalization in 1998-99? 3 A The number one reason was loss of the 4 Freightliner standard position in my opinion. 5 Q And unexpectedly high warranty claims, 6 repairs on those G platform contributed to your 7 inability to sell as many as you expected, right? 8 MS. DUNCAN HACKETT: Objection. 9 THE WITNESS: Price increases from 10 vendors. There's many reasons why your costs go 11 up more than you expected and your revenues go 12 down more than you expected. 13 BY MR. OSTOYICH: 14 Q Absolutely, and I just want to make 15 sure, though, that unexpectedly high warranty 16 claims, repairs on the G platform, contributed to 17 your selling fewer of those than you anticipated? 18 A I never said that. 19 MS. DUNCAN HACKETT: Objection. 20 THE WITNESS: I never said that -- never 21 said that it contributed to selling less than we 22 expected.</p>

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<p>1 I don't know the warranty -- I don't</p> <p>2 know that any customer ever left us for that. I</p> <p>3 don't know of any customer that, in the long run,</p> <p>4 didn't believe that we were -- we properly handled</p> <p>5 our warranty claims.</p> <p>6 BY MR. OSTOYICH:</p> <p>7 Q Unexpectedly high repair rates -- you</p> <p>8 agree with me that the G platform, you didn't</p> <p>9 expect to see 80 repairs for every hundred in the</p> <p>10 field?</p> <p>11 A I agree with you on that, yes.</p> <p>12 Q You would agree with me that having</p> <p>13 unexpectedly high repair rates of, at times, 80</p> <p>14 repairs for every hundred units made it harder for</p> <p>15 you to sell the volumes you expected of the</p> <p>16 G platform?</p> <p>17 MS. DUNCAN HACKETT: Objection.</p> <p>18 THE WITNESS: No. I believe it</p> <p>19 contributed to higher warranty costs than we</p> <p>20 expected.</p> <p>21 BY MR. OSTOYICH:</p> <p>22 Q And that contributed to the difficulties</p>	<p>1 see that.</p> <p>2 Q And then you say, "I have put together</p> <p>3 the attached information," and that's Exhibit 24</p> <p>4 to your deposition?</p> <p>5 A That's correct.</p> <p>6 Q And then you tell Mr. Gosnell and</p> <p>7 Mr. Vogel that the conclusions that you have</p> <p>8 always reached from this analysis are, number one,</p> <p>9 to be viable, you must, at a minimum, provide the</p> <p>10 OEM with a 10/12-speed manual and automated manual</p> <p>11 transmission, a 6-speed manual and automated</p> <p>12 manual transmission, and an LL transmission,</p> <p>13 right?</p> <p>14 A Yes, that's what it says.</p> <p>15 Q And number two thing -- conclusion that</p> <p>16 you inform them that you have always reached from</p> <p>17 your analysis is that you need to provide either</p> <p>18 some multispeed or automatic transmissions, right?</p> <p>19 A Yes, that's what it says.</p> <p>20 Q You tell them if we can't meet these</p> <p>21 criteria, we will not be considered a viable</p> <p>22 transmission supplier.</p>
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<p>1 of financial health of the joint venture?</p> <p>2 A It aided in that, yes.</p> <p>3 Q Now, your e-mail in April 2003 to</p> <p>4 Mr. Gosnell, Mr. Vogel, the next sentence you say</p> <p>5 you have continually said that this joint venture</p> <p>6 cannot survive without a complete product line to</p> <p>7 compete with Eaton. Every OEM has told us</p> <p>8 repeatedly that you need a product line that is</p> <p>9 competitive with Eaton in order to be considered</p> <p>10 as a viable transmission supplier, right?</p> <p>11 A Yes, that's what it says.</p> <p>12 Q In the next paragraph you tell</p> <p>13 Mr. Gosnell and Mr. Vogel you try to provide a</p> <p>14 synopsis of the Class 5 through 8 transmission</p> <p>15 market. I've put together the attached</p> <p>16 information, and that's the presentation which is</p> <p>17 Exhibit 24, right?</p> <p>18 A I'm sorry, where did you --</p> <p>19 Q I'm reading right in the middle of</p> <p>20 your -- about a third of the way down your e-mail</p> <p>21 to Mr. Gosnell.</p> <p>22 A "To try to provide a synopsis," yes, I</p>	<p>1 A That's what it says, and this was at a</p> <p>2 period of time where I was trying my best to keep</p> <p>3 the joint venture viable.</p> <p>4 Q A little bit below that, there's a</p> <p>5 reference you make to the original plan for the</p> <p>6 JV. Do you see that paragraph down there?</p> <p>7 A That's correct.</p> <p>8 Q You say, "The original plan for this</p> <p>9 J.V. was to have the high volume products I</p> <p>10 described in Item 1 above, plus viable automatics.</p> <p>11 In fact, the first quote this J.V. made was a line</p> <p>12 of medium-duty transmissions to International that</p> <p>13 never materialized."</p> <p>14 A That's correct.</p> <p>15 Q Tell me about that. The company -- so</p> <p>16 we saw some plans early on that the company</p> <p>17 thought about getting it to medium-duty</p> <p>18 transmissions, right?</p> <p>19 A Before the joint venture actually became</p> <p>20 a joint venture, ZF, with our knowledge, made a</p> <p>21 presentation to International, which I think at</p> <p>22 the time had a new name for their medium duties of</p>

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<p>1 Blue Diamond, but I wouldn't swear to that name, 2 of potential 6-speed manuals and automated manuals 3 that was to be folded into the joint venture. 4 Q And was that -- 5 A That's what I'm talking about. 6 Q Was that a 6-speed that would be 7 purchased from TTC Spicer, or would you at that 8 point -- 9 A That was a ZF conceptual design product. 10 Q And it sounds like you made a quote to 11 International in that time period? 12 A As I said, it was made by ZF people 13 from -- ZF people from their plant in Georgia, 14 their business in Georgia, with our knowledge. 15 Q Just so I'm clear, you say the quote for 16 the 6-speed medium-duty transmission to 17 International was made by ZF people at Georgia, 18 you mean ZF-AG people -- 19 A Correct. 20 Q -- the separate company? 21 A Correct. 22 Q Okay. And that -- I guess they made the</p>	<p>1 Anything you want to change from your 2 testimony so far? 3 A No, sir. 4 Q I'm going to mark as Exhibit 25 to your 5 deposition an e-mail from Wolfgang Vogel to 6 Kathleen McAvoy, Rick Martello at Meritor, 7 April 19th, 2003. I ask you to take a look at 8 that. 9 (Martello Deposition Exhibit No. 25 was 10 marked for identification.) 11 THE WITNESS: Okay. 12 BY MR. OSTOYICH: 13 Q For the record, it's ZFMA0170083 to 84. 14 I take it, Mr. Martello, that this is a 15 response to your e-mail to Mr. Gosnell and 16 Mr. Vogel that you received in the ordinary course 17 of your duties as President of the joint venture 18 on April 19th, 2003, from Mr. Vogel, right? 19 A Yes, sir. 20 Q And he says, "Rick, thank you for this 21 presentation," and that's the presentation we just 22 looked at, the prior two exhibits to your</p>
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<p>1 quote, but the product was never -- never 2 materialized? 3 A That's correct. 4 Q And why did the product not materialize? 5 A I don't know what happened. At this 6 point in time, I'd have to go back. It was 7 probably '98, so 10 years ago. 8 Q I'm going to mark as Exhibit 24 to your 9 deposition -- 10 THE REPORTER: 25. 11 MR. OSTOYICH: 25. 12 MS. DUNCAN HACKETT: Joe, before you do 13 that, can we take a quick break? 14 MR. OSTOYICH: Yeah, we'll take a short 15 break. 16 THE VIDEOGRAPHER: Going off the record. 17 This is the end of Tape 5. The time is 4:09 p.m. 18 (A break was taken.) 19 THE VIDEOGRAPHER: Back on record. This 20 is Tape No. 6. The time is 4:19 p.m. 21 BY MR. OSTOYICH: 22 Q All right, Mr. Martello, welcome back.</p>	<p>1 deposition, right? 2 A I believe so. 3 Q "I think we all agree that a longterm 4 strategy to be, say, a 30 or 40% market share 5 player against Eaton requires a product lineup 6 close to theirs," right? 7 A That's what it says. 8 Q It says, "Actually this was our plan in 9 1999, based on the predictions that were presented 10 then for the G platform to reach 25 to 30% 11 (without the FreedomLine)," right? 12 A That's what it says. 13 Q It says, "We all know what happened." 14 A That's what it says. 15 Q And then he advocates that, in his view, 16 the immediate course of action should be to stop 17 the cash bleeding and reposition the joint venture 18 and start from a smaller scale, right? 19 A That's what it says. 20 Q And this is in April of 2003. 21 Subsequent to this, for the next four to 22 six months, you negotiated back and forth, and</p>

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<p>1 ultimately at the end of that year, you agreed to 2 dissolve the joint venture at that time, right? 3 A I believe the joint venture dissolves at 4 the end of the year, yes. 5 Q And subsequent to that, Meritor then 6 made a decision to stop manufacturing and selling 7 the manual transmissions? 8 A That would have been after I retired. 9 Q Fair enough. You weren't involved in 10 any decision in that regard? 11 A That would have been after I retired, 12 yes. 13 Q And after the joint venture dissolved, 14 though, Meritor, ArvinMeritor, continues to sell 15 the FreedomLine transmission in North America, 16 right? 17 A Best of my knowledge, between the time 18 you're talking about and when I retired, they 19 still sold manuals as well as the FreedomLine. 20 Q Fair enough. The FreedomLine -- so I'm 21 clear on this. The FreedomLine, your plan in 1999 22 that we saw was to release the FreedomLine at all</p>	<p>1 FreedomLine? 2 A I believe they did. 3 Q And did Volvo or Volvo Mack release the 4 FreedomLine? 5 A I believe they did. 6 Q And did International Truck release the 7 FreedomLine? 8 A I believe they did. 9 Q And it was listed in all those 10 companies' databooks as an optional transmission, 11 right? 12 MS. DUNCAN HACKETT: Objection. 13 THE WITNESS: The actual standard truck 14 in the industry is a truck that's never been 15 purchased. It's made up of components that are 16 the cheapest in the databook usually, so mostly 17 every transmission is an option of some kind. 18 BY MR. OSTOYICH: 19 Q In other words, customers typically will 20 spec various components? 21 A That's right. 22 Q They don't typically buy whatever is</p>
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<p>1 the major OEMs, right? 2 A That's correct. 3 Q And it was released at Peter Bilt in the 4 spring of 2001? 5 A Peter Bilt was the first place it was 6 released. I believe you may be right in the time 7 frame, but I couldn't be certain. 8 Q Fair enough. But the FreedomLine 9 transmission was in fact released at Peter Bilt? 10 A That is correct. 11 Q And Peter Bilt is a subsidiary of 12 PACCAR -- 13 A That is correct. 14 Q -- one of the big customers? 15 A That's correct. 16 Q And Kenworth is another subsidiary of 17 PACCAR? 18 A That is correct. 19 Q And Kenworth in fact released the 20 FreedomLine transmission? 21 A That is correct. 22 Q And did Freightliner release the</p>	<p>1 listed as the standard? 2 A That is correct. 3 Q And the FreedomLine transmission was 4 listed as an optional transmission offering by 5 Freightliner, Volvo, International Truck and 6 PACCAR during the tenure of the joint venture? 7 A I do not know if they were all listed in 8 the databook. 9 Q I'm going to show you a press release -- 10 A I do know that they were offered, but 11 not -- I'm not sure if they were all in the 12 databook. 13 Q Okay. What do you mean you know they 14 were offered, but you're not sure they -- 15 A I know we sold transmissions through all 16 those OEMs. 17 Q Okay. You're not sure whether 18 specifically whether it was in the databook, but 19 you know that all four of those OEMs offered to 20 their fleet customers the FreedomLine 21 transmission? 22 A I know that we sold -- I'm 99 percent</p>

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<p style="text-align: right;">Page 334</p> <p>1 sure we sold transmissions, FreedomLine</p> <p>2 transmissions, through each of those OEMs, yes.</p> <p>3 Q Fair enough. Let me show you a press</p> <p>4 release the company issued in October of 2002,</p> <p>5 okay?</p> <p>6 A 2002?</p> <p>7 Q 2002. And the press release says,</p> <p>8 "ArvinMeritor, Inc., issued the following product</p> <p>9 text correction to its press release distributed</p> <p>10 earlier today.</p> <p>11 "We released the following statement</p> <p>12 that requires a correction:</p> <p>13 "The FreedomLine transmission captures</p> <p>14 standard position with four truck OEMs; fifth OEM</p> <p>15 position begins in 2003."</p> <p>16 And then that was corrected and says,</p> <p>17 "The correct statement is:</p> <p>18 "The FreedomLine automated manual</p> <p>19 transmission is now available as a standard</p> <p>20 databook option with four truck OEMs; a fifth OEM</p> <p>21 offering begins in 2003."</p> <p>22 A Okay.</p>	<p style="text-align: right;">Page 336</p> <p>1 A Yeah. You have to understand that they</p> <p>2 were offered in the position because -- they were</p> <p>3 all offered, and they were all outside of the</p> <p>4 Eaton contracts with these people because Eaton</p> <p>5 did not have a comparable product. Therefore,</p> <p>6 they didn't fall under the long term agreements</p> <p>7 that Eaton had with every OEM.</p> <p>8 Q Therefore, the OEMs offered them as a</p> <p>9 databook option?</p> <p>10 A That's correct.</p> <p>11 Q Mr. Martello, I'm going to show you</p> <p>12 Exhibit 27 to your deposition, which is -- this is</p> <p>13 a document the company produced from its files,</p> <p>14 ZFMA0000436 through 39. It's called ZFM Situation</p> <p>15 Overview.</p> <p>16 (Martello Deposition Exhibit No. 27</p> <p>17 was marked for identification.)</p> <p>18 THE WITNESS: I have no reason to</p> <p>19 believe I ever saw this before.</p> <p>20 BY MR. OSTOYICH:</p> <p>21 Q Okay. Just so we're clear --</p> <p>22 A Can you give me some indication of where</p>
<p style="text-align: right;">Page 335</p> <p>1 Q I'll ask you to take a look at that.</p> <p>2 (Martello Deposition Exhibit No. 26 was</p> <p>3 marked for identification.)</p> <p>4 THE WITNESS: Okay, I read it.</p> <p>5 BY MR. OSTOYICH:</p> <p>6 Q I take it this reflects that the</p> <p>7 FreedomLine transmission was in fact offered as a</p> <p>8 databook option at all of the four major OEMs?</p> <p>9 A This is four truck OEMs. Fifth OEM</p> <p>10 position begins in 2003, meaning separating Peter</p> <p>11 Bilt and Kenworth as two truck OEMs is what I</p> <p>12 would take this to mean.</p> <p>13 Q So just so we're clear on the record,</p> <p>14 this is a press release announcing that, in fact,</p> <p>15 Freightliner, Volvo, Peter Bilt and Kenworth and</p> <p>16 International offered the FreedomLine transmission</p> <p>17 as a databook option, right?</p> <p>18 A I don't remember which one the fifth --</p> <p>19 the fifth OEM would be. I don't remember.</p> <p>20 Q But all of them at this time period</p> <p>21 either were or were about to issue the -- offer</p> <p>22 the FreedomLine as a databook option?</p>	<p style="text-align: right;">Page 337</p> <p>1 it came from and what it was --</p> <p>2 Q Came from the company's files.</p> <p>3 A -- and what time frame it is?</p> <p>4 Q All I can tell you is what I know, which</p> <p>5 is down at the bottom, the company put on a stamp</p> <p>6 on it that says ZFMA.</p> <p>7 A Okay.</p> <p>8 Q So I take it you didn't draft this</p> <p>9 ZFM Situation Overview?</p> <p>10 A I did not draft it for sure.</p> <p>11 Q Do you know who did draft it?</p> <p>12 A I have no idea who drafted it. I could</p> <p>13 read it thoroughly. I have no idea.</p> <p>14 Q Nothing in here jogs your memory seeing</p> <p>15 this before or participating in drafting this?</p> <p>16 A I can say that I don't remember ever</p> <p>17 seeing it, and didn't participate in drafting it</p> <p>18 whatsoever.</p> <p>19 Q Anything in here give you any insight</p> <p>20 into who prepared it potentially? I'm sorry, just</p> <p>21 for the record, Mr. Martello, you're not saying --</p> <p>22 A No, I --</p>

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<p>1 Q -- the answer is no?</p> <p>2 A No. It would be a total absolute guess,</p> <p>3 so I don't know.</p> <p>4 Q Okay. What number are we up to, Dawn?</p> <p>5 THE REPORTER: 28.</p> <p>6 BY MR. OSTOYICH:</p> <p>7 Q Mr. Martello, I have a series of letters</p> <p>8 from International Truck in the 2001-2002 time</p> <p>9 frame asking ZF Meritor/ArvinMeritor to lower the</p> <p>10 prices of your transmissions.</p> <p>11 Do you recall that situation?</p> <p>12 A I recall letters asking for lower prices</p> <p>13 from every OEM almost every year.</p> <p>14 Q Sure. That's their job, right? They're</p> <p>15 buyers, and they want to pay less than they're</p> <p>16 paying, right?</p> <p>17 A That's correct.</p> <p>18 Q And you recall that the company rejected</p> <p>19 those requests by International Truck for lower</p> <p>20 prices?</p> <p>21 MS. DUNCAN HACKETT: Objection.</p> <p>22 THE WITNESS: I'd have to see the</p>	<p>1 time, I would imagine we gave them some reduction</p> <p>2 on some product, yes.</p> <p>3 Q I don't want you to imagine. Do you</p> <p>4 remember specifically doing that?</p> <p>5 A No, I don't remember specifically.</p> <p>6 Q The reason I'm asking is I can't find</p> <p>7 any documents documenting an agreement to lower</p> <p>8 your prices to International.</p> <p>9 A I don't remember specifically, no.</p> <p>10 Q Fair enough.</p> <p>11 Do you remember when the joint venture</p> <p>12 was dissolved that the company informed its</p> <p>13 customers that the FreedomLine was going to</p> <p>14 increase in price by --</p> <p>15 A Yes, I do remember that, yes.</p> <p>16 Q And were you directly -- did you</p> <p>17 communicate that message to any of the OEMs?</p> <p>18 A I personally did not.</p> <p>19 Q And did you have any discussions with</p> <p>20 the OEMs about the increase in price on the</p> <p>21 FreedomLine?</p> <p>22 A I personally did not.</p>
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<p>1 documents you're talking about and time frame and</p> <p>2 everything in order to answer that question.</p> <p>3 BY MR. OSTOYICH:</p> <p>4 Q Okay. So you don't recall one way or</p> <p>5 another sitting here today?</p> <p>6 A No. I mean, I don't recall -- like I</p> <p>7 say, we had negotiations with OEMs constantly</p> <p>8 about pricing, so I don't know which you're</p> <p>9 talking about, which price decrease we rejected</p> <p>10 and which one we accepted, without some knowledge</p> <p>11 of time frame and what it was all about.</p> <p>12 Q What about this, Mr. Martello? Do you</p> <p>13 remember granting International any price</p> <p>14 concessions on your transmissions?</p> <p>15 MS. DUNCAN HACKETT: Objection.</p> <p>16 THE WITNESS: At some point during the</p> <p>17 period I was General Manager, I would believe that</p> <p>18 at some point we did, yes.</p> <p>19 BY MR. OSTOYICH:</p> <p>20 Q So that was the period -- you were</p> <p>21 General Manager in the '95 to '99 time period?</p> <p>22 A From '99 through 2004, at some point in</p>	<p>1 Q And the letters come from Mr. Kline.</p> <p>2 A That's correct.</p> <p>3 Q I take it, was that his responsibility</p> <p>4 to communicate the price increase on the</p> <p>5 FreedomLine to the OEMs?</p> <p>6 A That's correct.</p> <p>7 Q Were you involved in that decision to</p> <p>8 increase the price of the FreedomLine</p> <p>9 transmissions?</p> <p>10 A No, sir.</p> <p>11 Q Who made that decision to increase the</p> <p>12 price of the FreedomLine transmissions?</p> <p>13 MS. DUNCAN HACKETT: Objection.</p> <p>14 THE WITNESS: I was not involved, so I</p> <p>15 can't say exactly who made the decision.</p> <p>16 BY MR. OSTOYICH:</p> <p>17 Q Someone other than you as the President</p> <p>18 of the joint venture, the ZF Meritor joint</p> <p>19 venture?</p> <p>20 A Well, that was happening when we were</p> <p>21 disbanding the joint venture and the product was</p> <p>22 going to come from Germany, so I would imagine</p>

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<p>1 somebody in the ZF organization made that 2 decision.</p> <p>3 Q Fair enough. I'm just trying to figure 4 out whether you had any involvement in the 5 decision, but it sounds like the joint venture -- 6 you, as the President of the joint venture, had no 7 input into that decision?</p> <p>8 A That is correct.</p> <p>9 Q Okay. So it came either from ZF or from 10 ArvinMeritor?</p> <p>11 A That is correct.</p> <p>12 Q Were you consulted at all about whether 13 the FreedomLine should increase in price at that 14 point?</p> <p>15 A At that point, no.</p> <p>16 Q I'm going to show you just a sample 17 letter. We'll mark it as Exhibit 30 to your 18 deposition --</p> <p>19 THE REPORTER: 28.</p> <p>20 MR. OSTOYICH: 28 to your deposition, 21 but it's a letter from Mr. Kline at ArvinMeritor 22 to Mr. Barkus at International.</p>	<p>1 sending this letter, Mr. Kline's letter, to Paul 2 Barkus at International?</p> <p>3 A No.</p> <p>4 Q So he didn't -- Mr. Kline didn't consult 5 you when he sent this letter to Mr. Barkus?</p> <p>6 A No.</p> <p>7 Q And did you have any input into 8 Mr. Kline's letter at all, substantive input?</p> <p>9 A No.</p> <p>10 Q Did you have any discussions with 11 Mr. Kline about the letter?</p> <p>12 A Mr. Kline and I discussed the fact that 13 ZF or ArvinMeritor, I believe ZF, wanted to 14 increase the price by \$1,250. I mean, we 15 discussed that. We saw each other every day still 16 at this point in time.</p> <p>17 Q But other than that discussion, you 18 didn't have any discussion about the specific 19 wording of his language or anything?</p> <p>20 A No.</p> <p>21 Q And I take it -- I've got comparable 22 letters from Mr. Kline to all the OEMs. I take it</p>
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<p>1 (Martello Deposition Exhibit No. 28 was 2 marked for identification.)</p> <p>3 MS. DUNCAN HACKETT: Joe, I'm just going 4 to put an objection on this record that this has 5 an ITE Bates stamp and his name isn't on it 6 anywhere, so I'm sure we probably have a Bates 7 number, but it's outside the -- this technically 8 is outside the protective order I'm just saying.</p> <p>9 MR. OSTOYICH: Okay. I can substitute 10 in an ArvinMeritor Bates stamp copy if you want.</p> <p>11 MS. DUNCAN HACKETT: It doesn't -- I 12 mean, it's obviously not my protective order, it's 13 ITE's, but I'm just saying that --</p> <p>14 MR. OSTOYICH: I can't imagine they can 15 complain since someone at ArvinMeritor sent the 16 letter to them.</p> <p>17 MS. DUNCAN HACKETT: That's fine. I'm 18 just noting it for the record.</p> <p>19 MR. OSTOYICH: Fair enough.</p> <p>20 BY MR. OSTOYICH:</p> <p>21 Q Mr. Martello, you're not copied on this. 22 My only question is were you involved in</p>	<p>1 the same situation --</p> <p>2 A I would imagine just the name at the top 3 changed.</p> <p>4 Q Fair enough. And you didn't discuss 5 with Mr. Kline the specific wording of any of 6 these letters he sent to the OEMs?</p> <p>7 A No.</p> <p>8 Q And I'm going to just show you so we're 9 clear on the record, this is a letter Mr. Kline 10 sent to Friedrich Baumann, the General Manager of 11 Purchasing at Freightliner, on December 12th, 12 2003. I'll ask you to take a look at that.</p> <p>13 (Martello Deposition Exhibit No. 29 was 14 marked for identification.)</p> <p>15 BY MR. OSTOYICH:</p> <p>16 Q Okay, Mr. Martello, you've had a quick 17 look at that document, I take it?</p> <p>18 A Yes.</p> <p>19 Q It's the same letter, right?</p> <p>20 A Same letter.</p> <p>21 Q Verbatim the same, Mr. Kline just put in 22 Mr. Baumann's name at Freightliner as the</p>

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<p style="text-align: right;">Page 346</p> <p>1 purchasing manager there instead of Mr. Barkus at 2 International, right? 3 A Other minor changes, but, yes. 4 Q Fair enough. And, again, you were not 5 involved in discussing the specifics of how 6 Mr. Kline should word that letter, I take it? 7 A No. 8 Q Okay. Now, we'll mark as Exhibit 30 an 9 e-mail from Charles Allen to Rolf Lutz, Wilhelm 10 Haerdtle, Rick Martello and others, Subject: 11 FreedomLine at Freightliner, January 16th, 2004, 12 and I'll ask you to take a look at that. 13 (Martello Deposition Exhibit No. 30 was 14 marked for identification.) 15 THE WITNESS: Yeah, I read it, and it's 16 an indication of basically the long-term agreement 17 that Eaton had with Freightliner, I believe, at 18 this point in time, FreedomLine was listed in the 19 penetration targets, and it was a simple and easy 20 way for Freightliner to give us a reason to delist 21 it. 22 BY MR. OSTOYICH:</p>	<p style="text-align: right;">Page 348</p> <p>1 Laurinburg. 2 Q Head engineering at ZF Meritor? 3 A Yes. 4 Q Liz Woodhull, who is she? 5 A She was a product manager that -- which 6 Freightliner and FreedomLine fell under. 7 Q And who is Wilhelm Haerdtle? 8 A I don't remember. 9 Q ZF/AG person, I take it? 10 A Yes. 11 Q And then there's Mr. Lutz, and he's on 12 the Board of Directors of ZF Meritor, right? 13 A Yes. 14 Q So Mr. Allen tells Mr. Lutz and you and 15 the others, "All, Freightliner indicated that the 16 FreedomLine will be 'de-listed' in the data book," 17 right? 18 A That's what it says, yes. 19 Q It says, "This action is the result of 20 the price increase," right? 21 A That's what it says, yes. 22 Q Now, when I asked you about this a</p>
<p style="text-align: right;">Page 347</p> <p>1 Q Okay. Let's start with the document 2 came from the company's files, ZFMA0303094. 3 A That's what this is. 4 Q It's an e-mail that you received in the 5 ordinary course of your employment -- 6 A Yes. 7 Q -- with the company from Charlie 8 Allen -- 9 A Yes. 10 Q -- on January 16th, 2004, right? 11 A Yes. 12 Q Okay. Now, Mr. Allen -- the subject is 13 the FreedomLine at Freightliner, right? 14 A Yes. 15 Q Okay. Mr. Allen is -- this is about a 16 month after Mr. Kline sends his letter to 17 Freightliner announcing the \$1,250 increase in the 18 FreedomLine transmission, right? 19 A Yes. 20 Q Mr. Allen says, Paul, and that's to you 21 and Mr. Lutz, Loren Dreier -- who is Loren Dreier? 22 A He's the -- he was the head engineer at</p>	<p style="text-align: right;">Page 349</p> <p>1 minute ago, you said something about an LTA and 2 some other information. 3 A Correct. 4 Q What are you referring to? 5 A Well, Eaton had a long-term agreement 6 with Freightliner that provided an -- 7 Q Let me -- 8 A -- incentive for penetration, and at 9 this point in time, I think it is, to the best of 10 my memory, a point in time when FreedomLine -- 11 Eaton got Freightliner to agree that FreedomLine 12 belonged into that agreement as far as going 13 against the calculation, and so this was an easy 14 way for Freightliner to say we're taking it out of 15 the agreement, and it goes into the -- you know, 16 we're taking it out of the databook because it 17 will help us meet the penetration goals that Eaton 18 has in the agreement. 19 Q Mr. Martello, let me break this down 20 into pieces. 21 A Yeah, go ahead. 22 Q The e-mail doesn't say anything about</p>

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<p>1 any long-term agreement between Eaton and 2 Freightliner, right?</p> <p>3 A No, but you asked me -- you asked me 4 what I thought -- you asked me a question about 5 this, and I gave you an answer about it.</p> <p>6 Q Right. I want to make sure we 7 distinguish between what you know from firsthand 8 knowledge and what you think from what you're 9 guessing about or what you have heard from other 10 people. There's a distinction, okay?</p> <p>11 This e-mail from your Director of Sales 12 and Engineering on January 16th, 2004, says, 13 "Freightliner indicated that the FreedomLine will 14 be 'de-listed' in the data book. This action is 15 the result of the price increase," right?</p> <p>16 A That's exactly what it says.</p> <p>17 Q And the price increase is the \$1,250 --</p> <p>18 A But you would --</p> <p>19 Q -- that Mr. Kline just announced a month 20 earlier to Freightliner on the FreedomLine, right?</p> <p>21 A But you would have to ask Mr. Allen 22 whether that statement was because he heard it</p>	<p>1 Freightliner about the decision to delist the 2 FreedomLine in their databook?</p> <p>3 A No, I did not.</p> <p>4 Q Okay. Now --</p> <p>5 A And I do not know if Charlie Allen did.</p> <p>6 Q Fair enough. Now, you mentioned the LTA 7 with Eaton and some other stuff. What makes you 8 bring that into this e-mail? Because it's not 9 written into the e-mail.</p> <p>10 A Well, as I said, there's always reasons 11 for people to do things. Freightliner had no real 12 incentive to delist it in the databook because of 13 the price increase. If the customer wanted to pay 14 the price increase, he could pay it. If he 15 didn't, they wouldn't order it.</p> <p>16 The reason to delist it is to get it out 17 of the databook, and so it is easier for them to 18 meet the agreement they had with Eaton. That's my 19 opinion.</p> <p>20 Q Sure, I understand that. I'm just 21 trying to --</p> <p>22 A And that's the reason -- that's the</p>
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<p>1 directly from Freightliner, or that that was his 2 opinion of what Freightliner -- the reason that 3 Freightliner delisted it. I don't know that, and 4 I gave you my opinion of why they delisted.</p> <p>5 Q I understand. I'll get to that in a 6 second. First I want to make clear what Mr. --</p> <p>7 A You asked me did I know this as a fact. 8 All I know is that that's what Charlie put in this 9 e-mail.</p> <p>10 Q All I want to establish, Mr. Martello, 11 is your Director of Sales and Engineering said 12 that Freightliner indicated that the FreedomLine 13 will be delisted in the databook. This action is 14 the result of a price increase, correct?</p> <p>15 A That's what he said, yeah, in this 16 e-mail.</p> <p>17 Q Now, did you directly talk to anyone at 18 Freightliner about the price increase of \$1,250 19 that the company had announced a month earlier on 20 the FreedomLine transmission?</p> <p>21 A No, I have not.</p> <p>22 Q Did you directly talk to anyone at</p>	<p>1 reason I brought it up because it says it right 2 here.</p> <p>3 Q Fair enough. You're entitled to 4 whatever opinion you want.</p> <p>5 A Okay.</p> <p>6 Q I'm just trying to figure out what the 7 basis of your opinion is.</p> <p>8 A That's the basis.</p> <p>9 Q It's not talking to Freightliner. 10 Obviously, you didn't talk to anybody at Eaton 11 about the FreedomLine being delisted, correct?</p> <p>12 A No. It's my knowledge of the market, 13 which says you can put anything you want in a 14 databook and put a price on it, and if somebody 15 wants to buy it at the price you put on it, so be 16 it. So why would anybody delist something for 17 that type of reason?</p> <p>18 We've had people put two and three times 19 the price increase we gave them on the penalty as, 20 you know, I'll show you what happens when you give 21 me a price increase. And so to say you're 22 going -- the reason is because of the price</p>

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<p style="text-align: right;">Page 354</p> <p>1 increase, I find that as -- you know, at the time,</p> <p>2 I might have told Charlie that, I don't know.</p> <p>3 Q Sure. I'm just trying to get to the</p> <p>4 basis for the opinion.</p> <p>5 A Okay.</p> <p>6 Q So you have an opinion, although the</p> <p>7 e-mail doesn't say it, it relates to the Eaton</p> <p>8 long-term agreement, right?</p> <p>9 A Absolutely. Absolutely that's my</p> <p>10 opinion.</p> <p>11 Q And your opinion is not based on anyone</p> <p>12 at Freightliner telling you that, right?</p> <p>13 A My opinion is the reason that we had</p> <p>14 trouble selling product at every OEM was the Eaton</p> <p>15 long-term agreements.</p> <p>16 Q I understand. That's why you filed a</p> <p>17 lawsuit. I understand that point.</p> <p>18 What I just want to know is why you hold</p> <p>19 the opinion you do, because it's not based on</p> <p>20 anything Freightliner told you about their</p> <p>21 contract with Eaton, correct?</p> <p>22 A It's not.</p>	<p style="text-align: right;">Page 356</p> <p>1 person?</p> <p>2 A I have no firsthand knowledge of that</p> <p>3 action.</p> <p>4 Q So you believe it, but you have no</p> <p>5 firsthand basis for believing it, right?</p> <p>6 A That is correct.</p> <p>7 Q And you're not discounting what</p> <p>8 Mr. Allen, your Director of Sales and Engineering,</p> <p>9 tells you in this e-mail? You have no reason to</p> <p>10 believe he's not telling you the truth?</p> <p>11 A I'm not -- I have no reason to believe</p> <p>12 that that was not his opinion also.</p> <p>13 Q Fair enough.</p> <p>14 MR. OSTOYICH: How much time do I have</p> <p>15 left, Billy?</p> <p>16 THE VIDEOGRAPHER: 20 minutes.</p> <p>17 MR. HOLCOMB: I have 5:08 by my</p> <p>18 calculation.</p> <p>19 BY MR. OSTOYICH:</p> <p>20 Q Mr. Martello, you told me earlier in the</p> <p>21 day you left -- you retired from the company, I</p> <p>22 think you said in April of 2004?</p>
<p style="text-align: right;">Page 355</p> <p>1 Q It's not based on anything Eaton told</p> <p>2 you about their contract?</p> <p>3 A It's based on my opinion of and</p> <p>4 knowledge of the market.</p> <p>5 Q Okay. Other than the fact it's in your</p> <p>6 head, anything else you're relying on for your</p> <p>7 opinion?</p> <p>8 A No.</p> <p>9 Q So because you say it, you think it,</p> <p>10 therefore, you're assuming it's true, right?</p> <p>11 MS. DUNCAN HACKETT: Objection.</p> <p>12 THE WITNESS: Because I have 30 years of</p> <p>13 experience in the business, and I was in this</p> <p>14 business at this level for a good many years, I</p> <p>15 know the reasons why someone would delist and not</p> <p>16 list things in the databook.</p> <p>17 BY MR. OSTOYICH:</p> <p>18 Q Let's be clear about this. When you say</p> <p>19 the know the reasons why -- you don't know the</p> <p>20 reason why anyone at Freightliner made a decision</p> <p>21 in this particular instance to delist the</p> <p>22 Freightliner from firsthand knowledge from that</p>	<p style="text-align: right;">Page 357</p> <p>1 A No. I retired September 31st, 2004.</p> <p>2 Q I thought you said you retired in March</p> <p>3 or April, but then you formally retired later that</p> <p>4 year in September.</p> <p>5 A Well, when the joint venture was</p> <p>6 dissolved, I worked for ArvinMeritor for a period</p> <p>7 of time until I retired on September 31st.</p> <p>8 Q In what capacity did you work for</p> <p>9 ArvinMeritor?</p> <p>10 A I just did special things for Tom</p> <p>11 Gosnell, whatever he asked me to do.</p> <p>12 Q Give me an example of what you worked</p> <p>13 on.</p> <p>14 A I worked on a contract resolution that</p> <p>15 we had with a company to solve the list of</p> <p>16 problems that there were.</p> <p>17 I worked at the beginning to help</p> <p>18 transition the joint venture to buying stuff from</p> <p>19 ZF and marketing it out of -- that's the first</p> <p>20 thing I did.</p> <p>21 And just from that point on, just little</p> <p>22 things that Tom asked me to do.</p>

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<p style="text-align: right;">Page 358</p> <p>1 Q Were you involved at all in any</p> <p>2 negotiations between ArvinMeritor and ZF/AG over</p> <p>3 the dissolution of the joint venture?</p> <p>4 A My involvement was to answer questions</p> <p>5 as part of -- as President of the joint venture.</p> <p>6 I was not on the ArvinMeritor negotiation team,</p> <p>7 nor on the ZF negotiation team.</p> <p>8 I was a person that they asked questions</p> <p>9 about as far as the joint venture was concerned.</p> <p>10 Q Were there formal negotiation teams set</p> <p>11 up at ArvinMeritor and at ZF/AG to negotiate the</p> <p>12 dissolution of the joint venture?</p> <p>13 A I don't know about formal.</p> <p>14 Q Okay. But there was some sort of</p> <p>15 negotiating team?</p> <p>16 A Yes, there was people that negotiated</p> <p>17 it, yes.</p> <p>18 Q Who at ArvinMeritor was involved in</p> <p>19 those negotiations?</p> <p>20 A Well, I know Dennis Kline was, I know</p> <p>21 Tom Gosnell was. That's the two I can remember</p> <p>22 off the top of my head, and were probably the two</p>	<p style="text-align: right;">Page 360</p> <p>1 ZF/AG and ArvinMeritor over who should pay or</p> <p>2 cover certain warranty expenses of the joint</p> <p>3 venture?</p> <p>4 MS. DUNCAN HACKETT: Objection.</p> <p>5 THE WITNESS: I can remember</p> <p>6 discussions, but when you say "dispute," what do</p> <p>7 you mean by a dispute?</p> <p>8 BY MR. OSTOYICH:</p> <p>9 Q What about --</p> <p>10 A You showed me that one piece of paper</p> <p>11 that I really don't remember, so --</p> <p>12 Q What about claims by ZF/AG that Meritor</p> <p>13 people had misrepresented the quality of the</p> <p>14 manual transmission product in the original</p> <p>15 purchase joint venture negotiations?</p> <p>16 A I never saw a document of that nature,</p> <p>17 no.</p> <p>18 Q I didn't ask you if you saw a document.</p> <p>19 Are you aware whether ZF/AG people took</p> <p>20 the position in your negotiations over the</p> <p>21 dissolution of the joint venture that Meritor</p> <p>22 people had misrepresented --</p>
<p style="text-align: right;">Page 359</p> <p>1 major people.</p> <p>2 Q What about at ZF/AG, who was involved in</p> <p>3 the dissolution?</p> <p>4 A I know the two major people were Rolf</p> <p>5 Lutz out of Schottenhauser (ph) -- I can't --</p> <p>6 Auto. Lutz was -- Lutz wasn't -- I mean, Vogel</p> <p>7 was not involved in any discussions I had. He</p> <p>8 was -- he stayed more in Germany, and the</p> <p>9 discussions usually happened in the United States.</p> <p>10 Those two I remember were the main two from ZF.</p> <p>11 Q So I take it as part of the dissolution</p> <p>12 process, you participated to the extent you had</p> <p>13 discussions directly with some ZF/AG people,</p> <p>14 Mr. Lutz and the other guy, Mr. Shoulden (ph)?</p> <p>15 A We never -- I can't say I had any</p> <p>16 without somebody from ArvinMeritor. It was</p> <p>17 usually a discussion where they called me in to</p> <p>18 say, you know, explain this to me, or what's this</p> <p>19 or what's that? How do you do this? It was more</p> <p>20 asking questions of me about how the business ran</p> <p>21 and what they should do from that standpoint.</p> <p>22 Q Were you aware of any dispute between</p>	<p style="text-align: right;">Page 361</p> <p>1 A At the delusion (sic) of the joint</p> <p>2 venture? No.</p> <p>3 Q At some point in your discussions with</p> <p>4 ZF/AG people, are you aware of whether they took</p> <p>5 the position that Meritor had misrepresented the</p> <p>6 quality of the manual transmission products during</p> <p>7 the formation of the joint venture?</p> <p>8 A That we misrepresented? I never heard</p> <p>9 that, no.</p> <p>10 There was numerous discussions in the</p> <p>11 Board meeting about the G platform quality</p> <p>12 problems. Did you know this? We didn't know</p> <p>13 this, we didn't know that when we formed the joint</p> <p>14 venture. Was it something you kept from us or</p> <p>15 didn't keep from us or you didn't know? There was</p> <p>16 always discussions at Board meetings just like</p> <p>17 discussions in any group.</p> <p>18 Q And did you hear ZF/AG people say that</p> <p>19 they believed Meritor had misrepresented the</p> <p>20 quality of the manual transmissions?</p> <p>21 A No. No, never heard it.</p> <p>22 Q And do you know whether they said it to</p>

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<p style="text-align: right;">Page 362</p> <p>1 other people, or did you discuss with other people</p> <p>2 at Meritor that ZF/AG indicated that they believed</p> <p>3 Meritor had misrepresented the quality of the</p> <p>4 G platform manual transmissions?</p> <p>5 A I don't know of any such situation, no.</p> <p>6 Q I want to make sure your testimony is</p> <p>7 clear, Mr. Martello.</p> <p>8 As President of the joint venture, you</p> <p>9 were never informed that ZF/AG took the position</p> <p>10 and informed the company that Meritor had</p> <p>11 misrepresented the quality of the manual</p> <p>12 transmissions during the formation of the joint</p> <p>13 venture?</p> <p>14 MS. DUNCAN HACKETT: Objection.</p> <p>15 THE WITNESS: You said -- could you read</p> <p>16 that back, the question back?</p> <p>17 (The reporter read back the record.)</p> <p>18 THE WITNESS: I'd have to go back and</p> <p>19 read the paper you gave me from Tom Shank that I</p> <p>20 don't remember ever seeing, but if that doesn't</p> <p>21 say it, then I don't ever remember that being</p> <p>22 said, no.</p>	<p style="text-align: right;">Page 364</p> <p>1 quality of the manual transmissions?</p> <p>2 A As I said, I was never in the actual</p> <p>3 negotiations between ArvinMeritor and ZF as to</p> <p>4 what happened or what the final agreement was</p> <p>5 going to be in any of the negotiations.</p> <p>6 I was only asked questions of, so I</p> <p>7 don't -- I can say I don't ever remember seeing a</p> <p>8 final document about the end of the joint venture.</p> <p>9 Q Were you involved in structuring the</p> <p>10 sales and marketing agreement between ArvinMeritor</p> <p>11 and ZF/AG to allow ArvinMeritor to continue</p> <p>12 selling the FreedomLine in U.S.?</p> <p>13 A Only a discussion of how -- what would</p> <p>14 have to happen for it to work. I wasn't in</p> <p>15 negotiating because, you know, what had to change</p> <p>16 at Laurinburg for all that happen, it was in that</p> <p>17 kind of discussion.</p> <p>18 That's what I said. After it dissolved,</p> <p>19 I helped, you know, figure out how we were going</p> <p>20 to do that, so I was involved in that part of it,</p> <p>21 yes.</p> <p>22 Q Were you involved in setting the terms</p>
<p style="text-align: right;">Page 363</p> <p>1 BY MR. OSTOYICH:</p> <p>2 Q Just to make sure we're crystal clear on</p> <p>3 this, Mr. Martello, are you denying that it</p> <p>4 occurred, or you just don't remember whether they</p> <p>5 told you that the company had misrepresented --</p> <p>6 A I can only tell you that I don't</p> <p>7 remember.</p> <p>8 Q You're not denying it occurred, you're</p> <p>9 just saying you don't remember one way or the</p> <p>10 other?</p> <p>11 MS. DUNCAN HACKETT: Objection.</p> <p>12 THE WITNESS: I can only tell you what I</p> <p>13 remember.</p> <p>14 BY MR. OSTOYICH:</p> <p>15 Q Fair enough. I just want to make sure</p> <p>16 we're clear on the record.</p> <p>17 A I can't deny that it's raining outside</p> <p>18 because I can't tell.</p> <p>19 Q And you, as part of your negotiations</p> <p>20 with the wind down, the dissolution of the joint</p> <p>21 venture, you weren't informed that ZF/AG took the</p> <p>22 position that Meritor had misrepresented the</p>	<p style="text-align: right;">Page 365</p> <p>1 on which ArvinMeritor would continue selling the</p> <p>2 FreedomLine transmission?</p> <p>3 A No.</p> <p>4 Q Okay, no further questions. Thank you</p> <p>5 for your time.</p> <p>6 A Thank you.</p> <p>7 MS. DUNCAN HACKETT: I have no</p> <p>8 questions.</p> <p>9 THE VIDEOGRAPHER: Going off the record.</p> <p>10 This concludes the deposition of Rick Martello.</p> <p>11 The time is 5:02 p.m.</p> <p>12 (Whereupon, at 5:02 p.m., the taking of</p> <p>13 the deposition was concluded.)</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>

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<p style="text-align: right;">Page 366</p> <p>1 Mr. Richard Martello c/o 2 Dickstein Shapiro 3 1825 Eye Street NW Washington, DC 20006 4 Case: Meritor v. Eaton 5 Date of deposition: 01/09/09 6 Deponent: Mr. Richard Martello 7 Please be advised that the transcript in the above 8 referenced matter is now complete and ready for signature. 9 The deponent may come to this office to sign the transcript, 10 a copy may be purchased for the witness to review and sign, 11 or the deponent and/or counsel may waive the option of signing. 12 Please advise us of the option selected. 13 Please forward the errata sheet and the original signed 14 signature page to counsel noticing the deposition, noting the applicable 15 time period allowed for such by the governing Rules of Procedure. 16 If you have any questions, please do not hesitate to call our office at 17 (202)-232-0646. 18 19 Sincerely, 20 21 Digital Evidence Group Copyright 2009 Digital Evidence Group 22 Copying is forbidden, including electronically, absent express written consent.</p> <p style="text-align: right;">Page 367</p> <p>1                      <b>CERTIFICATE OF NOTARY PUBLIC</b> 2                      I, DAWN A. JAQUES, a Notary Public in and for 3 the District of Columbia, before whom the foregoing 4 deposition was taken, do hereby certify that witness 5 whose testimony appears in the foregoing pages was 6 duly sworn by me; that the testimony of said witness 7 was taken by me in shorthand at the time and place 8 mentioned in the caption hereof and thereafter 9 reduced to typewriting under my supervision; that 10 said deposition is a true record of the testimony 11 given by said witness; that I am neither counsel 12 for, related to, nor employed by any of the parties 13 to the action in which this deposition is taken; 14 and, further, that I am not a relative or employee 15 of any attorney or counsel employed by the parties 16 thereto, nor financially or otherwise interested in 17 the outcome of the actions. 18 19 20                      _____ Dawn A. Jaques, C.S.R. Notary Public in and for District of Columbia 21 22                      My commission expires: December 14, 2010.</p>	<p style="text-align: right;">Page 368</p> <p>1 Digital Evidence Group, L.L.C. 2 1111 16th Street, Northwest, Suite 410 3 Washington, D.C. 20036 4 (202) 232-0646 5 6                      <b>SIGNATURE PAGE</b> 7 8 Case Name: Meritor v. Eaton 9 Witness Name: Mr. Richard Martello 10 Deposition Date: 01/09/09 11 I do hereby acknowledge that I have read 12 and examined the foregoing pages 13 of the transcript of my deposition and that: 14 (Check appropriate box): 15 ( ) The same is a true, correct and complete transcription of the answers given by 16 me to the questions therein recorded. 17 ( ) Except for the changes noted in the 18 attached Errata Sheet, the same is a true, correct and complete transcription of the 19 answers given by me to the questions therein recorded. 20 21 22                      _____ DATE                      WITNESS SIGNATURE</p> <p style="text-align: right;">Page 369</p> <p>1 Digital Evidence Group, L.L.C. 2 1111 16th Street, Northwest, Suite 410 3 Washington, D.C. 20036 4 (202) 232-0646 5 6                      <b>E R R A T A   S H E E T</b> 7 8 Case Name: Meritor v. Eaton 9 Witness Name: Mr. Richard Martello 10 Deposition Date: 01/09/09 11                      Page No.    Line No.            Change 12 13 14 15 16 17 18 19 20 21 22                      _____ Signature                      Date</p>
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